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*March 29<sup>th</sup>. 1700.*

**I** Do Appoint *Matthew Gillyflower* and  
*John Barnes*, to Print the Bill for  
my Divorce from the Lady *Mary Mor-*  
*dant*, with the Papers and Proceedings  
thereunto relating, and that no other  
Person do presume to Print the same.

*NORFOLKE, E. M.*

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THE  
PROCEEDINGS

UPON THE

Bill of Divorce

Between His GRACE the

DUKE of NORFOLKE

AND THE

Lady MARY MORDANT,

VIZ.

- I. *The Journal of the House of LORDS, together with the BILL.*
- II. *The Depositions before their LORDSHIPS.*
- III. *The Examination and Evidence of the Duke's Witnesses.*
- IV. *The State of the Case on both sides.*
- V. *Bishop COUSENS's Argument, proving that Adultery causes a Dissolution of Marriage.*
- VI. *The Pleadings of the Learned Council, before the Honourable House of Commons, and the Committee, with other Matters thereto relating.*

L O N D O N,

Printed by Matthew Gillyflower in Westminster Hall,  
and John Barnes in the Pall-Mall. 1700.

DUKE OF YORK

1944-1945

11. The Department of the Interior, Bureau of Land Management, is hereby authorized to acquire, for the purpose of the National System of Public Lands, the following lands, to-wit:

V. Filed CO. 1917

1917

1940

Rec. Feb. 25, 1902.

100000

*Die Jovis 15. Die Februarii, 1699.*

**U**PON Reading the Petition of *Henry Duke of Norfolk*, praying leave *D. Norfolk's Petition.* to bring in a Bill to dissolve his Marriage with the Lady *Mary Mordant*, and to enable him to Marry again; he having certain proof of his Wife's living in Adultery with Sir *John Germaine*, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said Petition shall be taken into consideration to morrow at Eleven of the Clock, and all the Lords summoned to attend.

*Die Veneris 16. Februarii, 1699.*

After reading the Order for resuming the Consideration of the Duke of Norfolk's Petition, and debate thereupon. *Bill.*

*Hodie prima vice lecta est billa*, Entituled an Act to dissolve the Duke of Norfolk's Marriage with the Lady *Mary Mordant*, and to enable him to Marry again. In the words following,

Humbly sheweth and complaineth to Your most Excellent Majesty, your true and faithful Subject *Henry Duke of Norfolk and Earl Marshal of England*, that he did some Years since marry the Lady *Mary Mordant* his now Wife, and that she hath for divers Years lived in Separation from the said Subject, and hath had unlawful Familiarity and adulterous Conversation with Sir *John Germaine*, Bar. and is guilty of Adultery on her part, and hath broken the Bond of Matrimony. For as much therefore as your said Subject hath no Issue, nor can hope for any other than spurious Issue to succeed him in his Honours, Dignities and Estate, unless the said Marriage be declared void, and annulled by Parliament, and your said Subject be enabled to marry any other Woman. May it please your most excellent Majesty, out of your Princely Goodness and Compassion to your said Subject's Misfortune and Calamity, and for the future Support and Comfort of himself and Family, that it may be enacted, And be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and of the Commons in this present Parliament assembled, and by the Authority of the same, that the said Bond of Matrimony being violated and broken by the manifest open Adultery of the said Lady *Mary Mordant*, be, and is hereby enacted, declared and adjudged to be from henceforth wholly dissolved, annulled, vacated, and made void to all Intents, Constructions and Purposes whatsoever: And that it shall and may be lawful to and for the said *Henry Duke of Norfolk*, at any time or times hereafter to contract Matrimony, and to marry (as well in the Life time of the said Lady *Mary* as if she were naturally dead) with any other Woman or Women, with whom he might lawfully marry in case the said Lady *Mary* was not living. And that such Matrimony when had and celebrated, shall be a good, just, and lawful Marriage, and so shall be adjudged, deemed, and taken to all Intents, Constructions and Purposes; and that all and every Child and Children born in such Matrimony, shall be deemed, adjudged and taken to be born in lawful Wedlock, and to be legitimate and inheritable, and shall inherit the said Dukedome of Norfolk, Office of Earl Marshal of England, and all other Earldoms, Dignities, Baronies, Honours and Titles of Honour, Lands, Tenements and other Hereditaments from and by their Fathers, Mothers, and other Ancestors in like manner and form as any other Child or Children born in lawful Matrimony shall or may inherit or be inheritable according to the course of Inheritances used in this Realm; and to have and enjoy all Privileges, Preeminencies, Benefits, Advantages, Claims and Demands, as any other Child or Children born in lawful Wedlock may have or claim by the Laws or Customs of this Kingdom. And be it further enacted, That the said *Henry Duke of Norfolk* shall be entituled to be Tenant by Courtesie of the Lands and Inheritance of such Wife whom he shall hereafter marry, and such Wife as he shall so marry shall be entituled to Dower of the Lands and Tenements whereof the said *Henry Duke of Norfolk* shall be seized of such Estate whereof she shall be dowable, as any other Husband or Wife may or might claim, have or enjoy. And the Child or Children born in such Marriage shall and may derive and make Title by Descent or otherwise to and from any of their Ancestors, as any other Child or Children may do, any Law, Statute, Restraint, Prohibition, Ordinance, Canon, Constitution, Prescription or Custom had, made, exercised or used to the contrary of the Premi-



les of any of them in any wise notwithstanding. And be it further enacted by the Authority aforesaid, That the said Lady Mary shall, and is hereby barred and excluded of and from all Power and Chiefties, and of and from all Right and Title of Dower and Chiefties unto or out of any the Honours, Mannors, Lands, or Hereditaments of the said Duke; and that all Conveyances, Joyntures, Settlements, Limitations and Creations of Uses and Trusts of, into, or out of any Honours, Mannors, Lands or Hereditaments at any time heretofore made by the said Duke; or any of his Ancestors or Trustees unto or upon or for the Use or Benefit of the said Lady Mary, or any the Issue of her Body, or for raising, discharging or counter-securing any the Mannors, Lands or Hereditaments of the said Lady Mary, or any of her Ancestors, shall be from henceforth, so far as concerns the said Lady Mary or any Issue of her Body, or any Interest for her or them, utterly void and of none effect; and all and every the said Honours, Mannors, Lands or Hereditaments of the said Duke or any of his Ancestors or Trustees, shall from henceforth remain and be to and for the Use and Benefit of the said Duke, and such other Person or Persons, and for such Estates and Interests, and in such manner and form as if the said Lady Mary was now naturally dead without any Issue of her Body. And also that all Limitations and Creations of any Use, Estate, Power or Trust made by any the Ancestors of the said Lady Mary, unto or for the Use or Benefit of the said Duke, his Heirs or Assignes, out of any the Mannors, Lands or Hereditaments of any the Ancestors of the said Lady Mary, shall be from henceforth void and of none effect. \* And be it further enacted by the Authority aforesaid, That the said Duke of Norfolk, his Heirs, Executors, Administrators, or Assigns, shall, on or before the five and twentieth Day of March One thousand seven hundred and one, pay or cause to be paid unto the said Lady Mary, or her Assignes, the Sum of ten thousand Pounds of lawful Money of England, which was the Portion in Money paid on her Marriage with the said Duke; and on default of Payment of the said Sum of ten thousand Pounds, on or before the said five and twentieth Day of March, then, and in such case, she, the said Lady Mary and her Assignes, during her Natural Life from the Decease of the said Duke, if she shall survive him, shall be entitled to, and shall and may have and enjoy such Joynture and other Advantages as she might or may have or claim by virtue of a certain Indenture, Quinque-partite, made upon and in consideration of the said Marriage, bearing date the thirtieth Day of June, Anno Domini One thousand six hundred seventy seven, and made or mentioned to have been made between Henry late Duke of Norfolk, then Earl of Norwich, Father of the said Duke, and the present Duke by the Name of Henry Lord Howard of the first part, Henry Earl of Peterborow and the said Dutchess by the Name of the Lady Mary Mordant, sole Daughter and Heir apparent of the said Earl of Peterborow of the second part, Henry Marquess of Worcester, William Earl of Powis and Henry Lord Obrian of the third part, Arthur Onslow, Esq; and Thomas Dalmatroy, Esq; of the fourth part, Simon Fox, Esq; and Thomas West, Gent. of the fifth part: And by virtue of the Agreements contained in certain Articles bearing date the eight and twentieth day of April, in the Year of our Lord One thousand six hundred ninety four, made or mentioned to have been made between the said Duke of the one part, and the said Henry Earl of Peterborow on behalf of the said Dutchess, and the said Dutchess of the other part, according to the true Intent and Meaning of the said Quinque-partite Indenture and Articles, and also during the joynt Lives of the said Duke and Dutchess shall and may enjoy five hundred Pounds per Annum by virtue of an Indenture Quadrupartite, dated the sixteenth day of June, One thousand six hundred ninety four, made or mentioned to have been made between the said Duke of Norfolk of the first part, the said Earl of Peterborow and the said Dutchess of the second part, William Lord Lemster of the third part, and Sir John Mordant, Knight and Barronet, and William Longueville, Esq; of the fourth part. And then and in such case the said Duke of Norfolk, his Heirs, Executors and Administrators is and are discharged of and from the Payment of the said Sum of Ten thousand Pounds, any thing herein contained to the contrary thereof in any wise notwithstanding. But on Payment of the said Ten thousand Pounds in manner as aforesaid, she, the said Lady Mary shall be wholly barred and excluded from her said Joynture, and of and from all other Advantages out of the Real and Personal Estate of the said Duke as aforesaid.

*Dutchess to have a Copy.*

*Council.*

Upon the first Reading of the Bill Entituled an Act to dissolve the Duke of Norfolk's Marriage with the Lady Mary Mordant, and to enable him to Marry again, It is ordered by the Lords Spiritual and Temporal in Parliament assembled; that the Dutchess of Norfolk may have a Copy of the said Bill, And that his Grace the Duke of Norfolk shall be heard by his Council to make good the Allegations of his Bill, on Tuesday next at Eleven of the Clock in the Forenoon, and that the Dutchess of Norfolk may have Council to attend at the same time, if she please.



*Die Sabbati 17. Februarii, 1699.*

Upon Reading the Petition of *Mary Dutchess of Norfolk* praying to be heard by her Council before any further proceedings be made on the Bill, Entituled, *Dutchess's Petition.* An Act to dissolve the Duke of *Norfolk's* Marriage with the Lady *Mary Mordant*, and to enable him to Marry again, It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Dutchess of *Norfolk* shall be heard by her Council as desired, on *Tuesday* next at Eleven of the Clock in the Forenoon.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That *William Lane*, and *John Le Fountain*, Gent. do attend this House on *Tuesday* the twentieth day of this instant *February*, at Ten of the Clock in the Forenoon, as Witnesses to be examined on the behalf of the Duke of *Norfolk*. *Duke's Witnesses.*

*Die Lane 19. Februarii, 1699.*

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That Mr. *Daniel Germaine*, Mr. *Simon Briane* alias *de Brienne*, Mrs. *Anna Maria Briane* alias *de Brienne*, and Mrs. *Judith Possfette* alias *Persode* do, and they are hereby required to attend this House as Witnesses on the behalf of his Grace the Duke of *Norfolk*, to morrow at Eleven of the Clock in the Forenoon.

*Die Martis 20. Februarii, 1699.*

After hearing Council upon the Petition of the Dutchess of *Norfolk*, pursuant to the Order of the Seventeenth instant, as also Council for the Duke of *Norfolk*, the following Order was made, viz. *Council.*

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That this House will hear Witnesses for the Duke of *Norfolk*, only to matter of Fact, since the rejecting of the first Bill, except only Mr. *Daniel Germaine*, Mr. *Simon Briane* alias *de Brienne*, Mrs. *Anna Maria Briane* or *de Brienne*, Mrs. *Judith Possfette* or *Persode*, Mrs. *Elizabet Vanes*, who are at liberty to give Evidence to matters of Fact before that time, which were not then before the House; and are hereby required to attend this House, as Witnesses on the behalf of his Grace the Duke of *Norfolk*, to morrow Morning at Eleven of the Clock.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That to morrow at twelve of the Clock this House will proceed to hear Council and Witnesses for the Duke of *Norfolk*, to make good the Allegations in his Bill, at which time the Dutchess of *Norfolk's* Council shall be present.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That *William Bayly* and *Edmund Davies* do, and they are hereby required, to attend this House to morrow at Eleven of the Clock in the Forenoon, as Witnesses to be examined on the behalf of the Duke of *Norfolk*.

*Die Mercurij 21. Februarii, 1699.*

The House being informed, that endeavours had been made to serve Orders upon the Duke of *Norfolk's* Witnesses, and several of them were sick, and others could not be found,

*Joseph Whilley* being called in and Sworn, said as follows.

*Daniel Germaine*—I went to his House and was told by a Neighbour no body was within, but they bid me go to the Alehouse at the next door and I might hear of him; and enquiring there, I found one of his Journeymen, *Peter Hercules*, who told me he had not been at home these six Months, nor could not tell when he would return; but I shewed him the Original Order, and served him with a Copy, and told him his Master was to appear at the Duke of *Norfolk's* Lodgings, at the House of Lords to morrow at Eleven a Clock as a Witness for him.

Mr. *Simon Briane*, I went to his House in *St. James's Street*, and Mr. *Possfette's* Man, *Fer. Hoffman*, came to the Door, who told me Mr. *Briane* went to *Kensington* that afternoon; and no sooner had he said so, but Mr. *Possfette* came in, who told me the same, and I askt him to speak with Mr. *Briane's* Wife, and he told me she was so weak, that I could not serve her with the Order. Then I askt to see Mrs. *Possfette* his own Lady, he likewise told me she was sick and could not be spoke to, so I shewed him the Original Order, and left the Copy with himself for his Lady and Mr. *Briane's* Lady, and forthwith

with went to *Kensington* to serve the Order upon Mr. *Briane*, but not meeting with him after a great deal of Inquiry, I left it with his Maid-Servant at his Lodgings, and served her with it, who told me she would give it her Master that Night, who waited for the King's coming from *Hampton-Court*. This Morning I went again to his House at *St. James's*, and sent for his Servant, who told me his Master did not come to Town last Night, so I believe his Maid had given him the Order.

Mrs. *Elleanor Vanesse*, I inquired at every House in *Kensington*, where I was informed there were *Dutch* People, and could not know of any of them of any such Woman; but the Earl of *Albemarle's* Steward, and the Porter of the Lodge going into *Hide-Park* (*Kensington*) promised me they would enquire after her, and send me word if they heard of such a Person.

Then *George Starkey* being called in and Sworn, said as followeth, I served *William Bayly* with the Order of this House, to attend as a Witness this Day, he told me he was under a Course of Physick, and could not stir out without danger of his Life, but any other Day he would attend.

Then a Certificate under the Hands of *John Hutton* and *Theodore Colladon*, Doctors of Physick was produced, and read as follows.

We whose Names are under written, Doctors of Physick, do certifie, that *Mary* Wife of *Simon de Brienne*, and *Judith* Wife of *Peter Persode*, have been for some time, and are at this present, so extraordinary ill in Bed, that neither of them can remove from thence, without danger of their Lives. Witness our Hands at their dwelling House, in *St. James's* street, betwixt ten and eleven of the Clock in the Morning, the 21<sup>st</sup>. Day of February <sup>1699.</sup><sub>1700.</sub>

*John Hutton.*

*Theodore Colladon.*

After which the following Order was made, viz.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That Doctor *John Hutton* and Doctor *Theodore Colladon* (who signed a Certificate delivered and read this Day, of the illness of Mrs. *Mary*, Wife to *Simon de Brienne*, and *Judith* her Sister, Wife to Mr. *Peter Persode*) do attend this House to morrow at eleven of the Clock, to attest upon Oath, what they have certified.

Then the form of the Oath formerly given to Witnesses, being read out of the Journal 23. Jan. 1691. The same was agreed to with some alteration, and is as followeth.

You shall true Answer make to all such Questions as shall be askt you by this Honourable House, in relation to the Charge of Adultery in the Bill brought in by the Duke of *Norfolk*, against the Dutchess of *Norfolk*, with Sir *John Germaine*. You shall declare your whole knowledge of this matter, and shall speak the Truth, and nothing but the Truth, as well upon the matter as you shall be examined on behalf of his Grace the Duke of *Norfolk*, as upon such Interrogatories as shall be exhibited on behalf of the Dutchess of *Norfolk*, without Favour or Affection to either Party. So help you God, and by the Contents of this Book.

Then the Council being called in, they for the Duke having opened the Nature of their Evidence, Mrs. *Elleanor Vanesse* was Sworn, and being asked some Questions by the Duke's Council, she appeared to be a *Dutch* Woman, and could not well understand *English*, and an Interpreter being offered by the Duke's Council; Council withdrew, and the House agreed that the Dutchess's Council should have an Interpreter also; and the Council being called in again, were told so by Order of the House, and that they might proceed to any other Witness. The Duke's Council desired that they might begin with Mrs. *Vanesse*, and withdrew.

Then the following Orders were made.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Agents for the Duke of *Norfolk*, do forthwith deliver a List of the Witnesses they intend to examine on the behalf of the Duke of *Norfolk*, to the Dutchess of *Norfolk*, or her Agents.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That to morrow at twelve of the Clock, this House will proceed to hear Council and Witnesses for the Duke of *Norfolk*, to make out the Allegations in his Bill, at which time the Dutchess of *Norfolk's* Council shall be present.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That *Daniel Germaine*, *Simon Briane* alias *de Brienne*, *Anna Maria Briane* alias *de Brienne*,

*Brienne, Judith Poffette, alias Persode, — Goutaken, — Pontack, Susanna Barrington, — Hic gonee, Mrs. Keemer, Joseph Barger, William Lane, John Le Fountaine, Jonathan Browne, — Hater, and — Welburne* do, and they are hereby required to attend this House to morrow, at eleven of the Clock in the forenoon, as Witnesses to be examined on the behalf of the Duke of Norfolk.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That *William Allen* and *John Maitland* do, and they are hereby required to attend this House, on Service of this Order, as Witnesses to be examined on behalf of the Duke of Norfolk

*Die Jovis 22. Februarii, 1699.*

The House being informed that *Sir Theodore Colladon*, and *Doctor Hutton* attended, as Ordered yesterday.

*Sir Theodore Colladon* being called in and Sworn, says he saw *Mrs. De Briane* yesterday, she was very ill fainting in Bed, and scarce able to live. *Mrs. Persode* he also visited, who having miscarried by a fright, could not stir out of her Bed without hazard of her Life.

*Doctor Hutton* being called in and Sworn, says he visited *Mrs. Mary de Briane* this Morning, she hath been sick three Months, is in an ill Condition of Health, and it will endanger her Life if she comes abroad. *Mrs. Persode* is very ill, she cannot come out of her Bed without endangering her Life.

Then the Council were called in for the Duke and Dutcheſs of Norfolk.

The Dutcheſs's Council moved to have the Witnesses Christian Names, and place of their abode, and said they had not the Names 'till this Morning.

Then the two Interpreters took the following Oath.

*You shall well, truly, and faithfully interpret between the House and Elianor Vaneſſe, the Witness, touching the matters she shall give in Evidence.*

Council being withdrawn, the House agreed to tell the Duke's Council, that they might proceed to examine Witnesses that were named the day before. And that if the Dutcheſs's Council had any Exception, they might now make it against them or their Testimony, and that the Duke's Agents should give the Christian Names of their Witnesses, and as much as they can of the places of their abode to the Agents of the Dutcheſs.

The Council being called in again, were told what was agreed by the House touching the Witnesses: Then the Duke's Council proceeded and called in *Elianor Vaneſſe*, who being askt several Questions by the Duke's Council, the Interpreter askt them of her in Dutch, and she answered again to the Interpreter, and he declared her answers to the House in English.

*Nicholas Hausſeur*, being Sworn in like manner, gave his Testimony in French by an Interpreter.

Then Council being withdrawn, the following Orders were made, viz.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Short-hand Writers, who took the Witnesses Evidence, do dictate to a Clerk in Order to be transcribed what the Witnesses have said, and that the Examinations with the Short-hand Writer's Book and Papers are to be sealed up and kept by the Clerk until the next day the House shall proceed on this matter, and then what is transcribed shall be read at the Bar in the presence of the Witness.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That on Saturday next at twelve of the Clock, this House will proceed to hear Council and Witnesses for the Duke of Norfolk to make out the Allegations of his Bill, at which time the Dutcheſs of Norfolk's Council shall be present.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That *Simon Briane* alias *de Brienne*, shall be and is hereby required to attend this House, on Saturday next at eleven of the Clock in the forenoon, to be Examined as a Witness on behalf of the Duke of Norfolk.

*Die Veneris 23. Februarii, 1699.*

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That *James Berger, Susannah Barrington, Frances Knight, and James Mackdonnell*, shall, and they are hereby required to attend this House to morrow at eleven of the Clock in the forenoon, as Witnesses to be Examined on the behalf of the Duke of Norfolk.

*Die Sabbati 24. Februarii, 1699.*

The House being moved, that *Mr. Simon Briane* or *De Brienne* may be sent for in Custody, for not having attended according to the Order of this House, as a Witness for the Duke of Norfolk.

C

Here:



Hereupon *Thomas Kellett* was called in, and being Sworn, said to this effect, *viz.* I went to the House of the Dutcheſs of *Norfolk*, and inquired for Mrs *Susannah Barrington*, and if she lived there, a Man said no: I asked if he could tell me where she was, he said no.

Then I went to serve Mr. *Simon Briane* or *de Brienne*, and being at his House enquired for him, his Man said, his Master was gone to *Kensington*; he took the Order and said he would give it his Master.

I went to the Lord *Cutts's* House, and asked for one Mr. *Berger*, but could not hear of him; I went to my Lord's Stables, and asked his Coachman for Mr. *Berger*, he said he lived in *Hedge-Lane*; there I went and found his Wife, and delivered the Order to her, she said she would have nothing to do with it, and that Mr. *Germaine* gave him Bread. I saw him yesterday, and he told me he had been with the Duke of *Norfolk*, and would attend him again.

I went again to the Dutcheſs of *Norfolk's* House to serve Mrs. *Barrington*, and one told me she was seen look out of a Window, and another told me she was at home, so I could not serve the Order on her.

The House being informed upon Oath, That a Copy of the Order for Mr. *Simon Briane* or *de Brienne* to attend this House, as a Witness for the Duke of *Norfolk*, was left with his Servant at his dwelling place, and he not attending this House, It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Serjeant at Arms, attending this House, do forthwith attach the Body of the said *Simon Briane* or *de Brienne*, and bring him to the Bar of this House, to answer for his Offence: And this shall be a sufficient Warrant on that behalf.

*To the Serjeant at Arms attending this House,  
his Deputy or Deputies, and every of them.*

The House was informed that one *Hugonee*, Servant to the Lord *Haversham*, being summoned was since gone away. Of which the Lord *Haversham* gave the House an account to this effect, That he received a Letter from the Duke of *Norfolk*, wherein he desired his Servant might attend the House this day. And his Lordship writ an answer that he should. But when his Lordship arose in the Morning his Servant was gone away, and told the Landry Woman or Servants, he had a Quarrel, and was going for *Holland*.

The Council and Witnesses being called in for the Duke of *Norfolk*, the Dutcheſs's Council present, and M. *Vaneſſe* at the Bar, the transcribed Depositions from the Short-hand Writer were read to her, and she signed them.

In like manner *Nicholas Hauſeur's* Deposition was read, and he signed it.

Then the Council proceeded, and Examined *William Bayly*, and his Deposition was taken in Short-hand, was left with the Clerk to be transcribed, in Order to be read to him on *Monday* next.

Council withdrew, and it was Ordered that *William Bayly* do attend this House on *Monday* next.

Then the following Orders were made.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That on *Monday* next at twelve of the Clock this House will proceed to hear Council and Witnesses for the Duke of *Norfolk*, at which time the Dutcheſs of *Norfolk's* Council shall be present.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That Mr. Secretary *Vernon* be desired to send to this House on *Monday* next at eleven of the Clock, the Books wherein the Entries of Passes are in the Months of *January*, *February*, and *March*, One Thousand six Hundred ninety one.

*Die Luna 26. Februarii, 1699.*

The Council for the Duke and Dutcheſs of *Norfolk* were called in, and the Examination of *William Bayly* was read to him, and he being cross Examined by the Dutcheſs's Council, and that Examination read to him, he signed them.

Then *John Curry* was called in and Sworn, said, I went to serve Mr. *La Fountaine*, and Mr. *Lane* with the Order for their Attendance.

Mr. *La Fountaine's* Wife lay in, he said he could not be forced to come, he was not a Subject of *England*, and is the Lady Dutcheſs's Servant.

Mr. *Lane* gave me a Letter to the Clerk of the Parliament, which was read, and in it he desired further time, not having Horses, nor could ride fast.

The Dutcheſs's Council moved for Copies of the Depositions taken, and time for the Dutcheſs to be heard, and withdrew. Then the following Orders were made, (*viz.*)

An Order for both Parties to have Copies of the Depositions, and so much as relates to that matter in the Journal.

The other for hearing the Dutcheſs by her Council, on *Monday* next, and the Duke's Council then to be present.

DEPO-



# Depositions of *Elleanor Vaness*.

*Die Jovis 22. Februarii, 1699.*

**E**LEANOR Vaness Sworn, Depo-  
seth as followeth, (*viz.*)

*Quest.* D'ye know Sir *John Germaine* and the Dutcheß of *Norfolk*?

*Answ.* Yes.

*Q.* How long have you known them?

*A.* Two Years.

*Q.* When did you first come acquainted with them?

*A.* Sir *John Germaine's* Sister hired me for a Cookmaid the Summer after the King came for *England*.

*Q.* In what Month of that Year?

*A.* In *May*.

*Q.* Did you live with either of them as a servant Maid?

*A.* I lived two Months with my Lady Dutcheß, in Sir *John Germaine's* House.

*Q.* How long did you live in the House with them?

*A.* Till they went to *Fox-Hall*.

*Q.* How long was the Dutcheß in the House before they went to *Fox-Hall*?

*A.* two Months.

*Q.* Where was that House?

*A.* Just over Spring Garden.

*Q.* At the time when the Lady Dutcheß lived with Sir *John Germaine*, what Company and Conversation did they keep with one another, and in what manner?

*A.* Like Man and Wife?

*Q.* Where was it the Lady Dutcheß lived when you came first into *England*?

*A.* In Sir *John Germaine's* House.

*Q.* Where did she live then?

*A.* The Dutcheß lived there then.

*Q.* How long continued she there?

*A.* About two Months.

*Q.* How did they live together during that time?

*A.* Like Man and Wife.

*Q.* Saw you them in Bed together at any time, at that place in the Cock-pit?

*A.* Yes.

*Q.* How often?

*A.* Many times, as often as Man and Wife she saw them in Bed, but did not put them in Bed in those two Months.

*Q.* Did you think any otherwise but that they had been Man and Wife?

*A.* She did not at first, but afterwards she did, and then they kept her within Doors, for fear she should tell it.

*Q.* Whither did the Dutcheß go after that two Months?

*A.* To *Fox-Hall*.

*Q.* How long did she live there?

*A.* About two Years?

*Q.* Did Sir *John Germaine* use to come and keep Company with the Dutcheß there?

*A.* Yes, He used to come and Dine with her sometimes, and he lay there sometimes.

*Q.* What Conversation had Sir *John Germaine* with the Dutcheß at *Fox-Hall*?

*A.* They Converſed together as Man and Wife.

*Q.* How long?

*A.* Sometimes one night, sometimes two.

*Q.* How often did he use to come thither?

*A.* Sometimes twice, sometimes three times a week, and sometimes but once.

*Q.* Had they one Bed or two?

*A.* But one.

*Q.* What Name did the Dutcheß go by at *Fox-Hall*?

*A.* By the Name of the Lady *Beckman*.

*Q.* What kin was Sir *John Germaine* pretended to be to the Lady Dutcheß?

*A.* Her Brother, my Lady Dutcheß said so.

*Q.* Did you go with them to *Fox-Hall*, or not?

*A.* She went with the Lady Dutcheß.

*Q.* Whose Servant was you there?

*A.* Lady Dutcheß's.

*Q.* How long did you serve the Lady Dutcheß.

*A.* She staid with her till she went to *Millbanck*.

*Q.* How came you to leave their Service?

*A.* They sent her away upon the account of the late Tryal.

*Q.* Who went with you?

*A.* Mrs. *Susannah*, Chambermaid to the Lady Dutcheß, and Mr. *Nicholas*, that was Gentleman to Sir *John Germaine*.

*Q.* What's his Name?

*A.* *Nicho-*

*A. Nicholas Hofier.*

*Q. Who took care of your passage ?*

*A. Nicholas Hofier.*

*Q. Whither was you ordered to go ?*

*A. To Holland to the Hague, they paid her in full and promised fifty Livers besides.*

*Q. Was any part of it paid, and by whom ?*

*A. She receiv'd it in four Quarters from his Brother Philip at the Hague.*

*Q. Whose Brother ?*

*A. Sir John Germaine's Brother;*

*Q. Who hired you when you came to England ?*

*A. Mr. Briane's Wife.*

*Q. What kin is she to Sir John Germaine ?*

*A. His Sister ; and they promised if matters did not go for the Dutcheſs, ſhe would come to Holland her ſelf, and take her into her Service again.*

*Q. Have you ſeen Sir John Germaine and the Dutcheſs in Bed together at Millbank ?*

*A. Once or twice.*

*Q. How long had the Lady Dutcheſs lived at Millbank ere you left her Service ?*

*A. Nine or ten Weeks.*

*Q. How came you to ſee them in Bed together.*

*A. By reaſon none was ſuffered to come into the Room, the Bedchamber, but ſhe and another Maid, to bring neceſſaries, as Water to Waſh their hands, and to clean the Room.*

*Q. Did you ſee them at their undreſſing when they went to Bed ?*

*A. She undreſſed them her ſelf, and ſaw them in Bed.*

*Q. Give an account how you two came to be admitted into the Chamber, and what you ſaw there ?*

*A. She help'd them to Bed, and ſaw them go to Bod together.*

*Q. ſaw you them next Morning ?*

*A. Yes.*

*Q. On what occaſion came you into the Chamber in the Morning ?*

*A. She came with Chocolate, and Water to waſh their Hands.*

*Q. Did you ever ſee Mr. Nicholas Hofier there ?*

*A. Yes, He did the Buſineſs that ſhe did, when ſhe could not be preſent ; he was Valet de Chambre.*

*Q. Was he Valet de Chambre to Sir John Germaine, or to the Dutcheſs ?*

*A. He belonged to the Dutcheſs at Fox-Hall, and afterwards to Sir John Germaine.*

*Q. Came he to Sir John Germaine before the Lady Dutcheſs went to Fox-Hall, or not ?*

*A. The Dutcheſs was at Fox-Hall when he came to Sir John Germaine.*

*Q. Who lived with the Dutcheſs at Fox-Hall ?*

*A. Sir John Germaine's Siſter.*

*Q. Who hired you ?*

*A. Mrs. Briane, Mr. Briane's Wife.*

*Q. Was there no other Relation of Sir John Germaine's that lived there beſides ?*

*A. Mrs. Judith.*

*Q. What Mrs. Judith, what's her name ?*

*A. She does not know.*

*Q. What kin was Mrs. Judith to Sir John Germaine ?*

*A. His Siſter.*

*Q. Did the Dutcheſs uſe to go to no other place ?*

*A. None but to the Neighbouring Gardens to gather Flowers.*

*Q. When you were at Millbank did you ever ſee the Dutcheſs's Father ?*

*A. She hath been ſeveral times at the Dutcheſs's Fathers, and the Lady Dutcheſs told her Father and Mother that ſhe brought her from Holland ; ſhe dreſſed three Diſhes of Meat by order of the Dutcheſs.*

*Q. Who was the Lady Dutcheſs's Father, where did he live ?*

*A. He lived at Millbank, but could not tell his name ; the Lord Peterborow, ſhe ſays, but could not think on't before now.*

*Q. When ſhe lived with Germaine at the Cockpit, was there no other that lived with them at that time ?*

*A. No Body.*

*Q. Did Sir John Germaine's Brother-in-Law or Siſter lye in the Houſe at any time ?*

*A. Yes, when they came firſt to England they uſed to lye there.*

*Q. Name them ?*

*A. Mr. Briane, and his Wife.*

*Q. Did you ſee any of Sir John Germaine's Relations at any time in the Room during the time that the Dutcheſs was in Bed with him ?*

*A. Yes, Mr. Briane and his Wife.*

*Q. Was Sir John Germaine in Bed at that time with the Dutcheſs ?*

*A. Yes.*

*Eliſapor Vanes's croſs Examined.*

*Q. Was it at Fox-Hall that the Lady Dutcheſs ſaid that Germaine was her Brother ?*

*A. Yes.*

*Q. Did the Dutcheſs tell you that Sir John Germaine was her Brother ?*

*A. She gave it out among the Neighbours, but never told her ſo.*

*Q. Was*

Q. Was you Cookmaid?

A. She was hired for Cookmaid.

Q. Did you continue to act as Cookmaid?

A. Yes, at *Fox-Hall*.

Q. Was you at the Cockpit?

A. She used to clean the Rooms, and no body was suffered to come into the Room but she, *Mrs. Susannah*, and *Nicholas*.

Q. Was there no other Woman in the House but you?

A. Yes, *Mrs. Susannah*.

Q. Where did you see Sir *John Germaine* and the Lady *Dutchess* in Bed?

A. At *Fox-Hall*.

Q. When came you from *Holland*?

A. About five or six Weeks ago.

Q. Where have you been since?

A. She does not know no place nor Street in *London*.

Q. How came you over?

A. About a Year and half ago, she met *Nicholas* at *Amsterdam*; She asked him how he did, and if he had got a place, he answered no, but he believed he should very soon have one in *England*.

Q. Who sent for you, or brought you over from *Holland* this last time?

A. She met Mr. *Nicholas* about a Year ago, and said she had a great mind to go and live in *England* again, and he said he would get a place for her.

Q. Who sent for her?

A. Does not know.

Q. When you came over, who paid your Passage, and first took Care of you?

A. *Nicholas* hath given her what she spent since.

Q. Who brought you to Town, and who furnished you with Money, and where did you Land, what House did you first come to?

A. She Landed at *Gravesend*.

Q. Who received her there, or when she came to Town, brought her to any place to Lodge at?

A. *Nicholas* brought her to a place where she was secure.

Q. What place is it?

A. She does not know, she never was in *London*.

Q. Did you not live at *Fox-Hall*, and at Sir *John Germaine*'s House in the Cockpit?

A. She was no further than those Houses, she means she was never in the City of *London*.

Q. Where is the House she has been at these six Weeks?

A. She can't tell whereabouts it is.

Q. Whether was you not sent for back from *Holland* to be a Witness?

A. No, knew nothing of it till about—  
Now about eight or nine Weeks ago.

Q. In what Street is the House you have been at?

A. I Can't tell.

Q. How long is it since you went into *Holland*, since you left the *Dutchess*'s Service?

A. About eight Years ago.

Q. Did you never tell any Body the occasion of your going over?

A. Yes, in *Holland*, but not here.

Q. To whom did you tell it?

A. To a great many.

Q. Know you any of those to be in *England*, that you told it to?

A. Does not know any.

Q. Did you ever Discover this matter of your own account, or was you asked to do it?

A. I said I would tell the Truth if I were asked.

Q. Can you Name the Person that asked you?

A. Mr. *Nicholas*.

Q. Had you any Discourse about this matter about eight Weeks ago?

A. When I asked Mr. *Nicholas*, if he could get me a place in *England*, I told him I would say the Truth.

Q. What Discourse had you with Mr. *Nicholas* about it?

A. I asked Mr. *Nicholas* whether there was any danger of any such thing, he said he knew nothing of it.

Q. Did you ever discover that you were sent out of the way into *Holland*?

A. No,

Q. Whether you and this Gent. that Interprets, have not talk'd most of this matter before you came hither?

A. No.

Q. Who have you talked to about this matter, since you came into *England*, besides *Nicholas*?

A. No Body.

Q. Are you a Single Woman or a Married Woman?

A. A single Woman.

*The Duke's Council.*

Q. Was it your Business to look after the Chamber, to keep the Door constantly, or on what occasion?

A. I us'd to Wash the *Dutchess*'s Cloaths, and bring to Sir *John Germaine*'s House, and keep the upper Rooms clean, where Sir *John Germaine* lay.

Q. Did *Susan* go over with you into *Holland*, and come back with you?

A. Mr. *Nicholas* brought me into a Room where she was kept, and I stayed a while with her.

Q. Did *Susan* go with you, and come with you again?

D

A. *Nicho-*



*A. Nicholas, and Susan, and I, were in a Room together, and Mr. Germaine came every Night when the House was broke up, and told us what passed.*

*Q. Did Susan go to Holland with you? whether did you go before Nicholas or with him?*

*A. Sir John Germaine ordered Nicholas and she, to go into Holland, and Nicholas went with her.*

*Signum,*

*Elianor Vaness.*

## Depositions of Nicholas Hausieur.

*Die Jovis 22. Februarii, 1699.*

*Nicholas Hausieur Sworn.*

*Q. Whether he knows Sir John Germaine and the Dutchess of Norfolk?*

*A. Yes Sir, I understand, I know both.*

*Q. How long have you been acquainted with Sir John Germaine, and upon what occasion?*

*A. The first he came to know him was in Suffolk-Street.*

*Q. Whether ever he was a Servant to him?*

*A. Yes, I was a Servant to him there.*

*Q. When was it you first came into Sir John Germaine's Service?*

*A. It was above half a Year before King James went away.*

*Q. Did you live with Sir John or the Dutchess?*

*A. With Sir John Germaine.*

*Q. Where did he dwell at that time?*

*A. He had Lodgings at the Golden Ball.*

*Q. Was you with him afterwards when he was at the Cockpit?*

*A. Yes, and I lived with him at the Cockpit too.*

*Q. At that time did you know the Dutchess of Norfolk?*

*A. I knew her, because they told me she was so.*

*Q. Was there any Lady that lived with Sir John Germaine at the Cockpit?*

*A. At that time there was Mrs. Brienne, Sir John Germaine's Sister.*

*Q. Was there any body else us'd to lodge there?*

*A. There was none there but her at first.*

*Q. Was there any other afterwards?*

*A. Yes, about two or three Months after he was there, but I don't justly know how long afterwards.*

*Q. Who was there then?*

*A. There was his Sister, by Name Mrs. Judith Germaine.*

*Q. Do you know any thing about the Dutchess of Norfolk at that time?*

*A. Yes.*

*Q. What Conversation had Sir John Germaine, and the Dutchess of Norfolk?*

*A. She was in the House, and they eat and drank together, and lay together.*

*Q. Where was that?*

*A. At Sir John Germaine's House next the Cockpit.*

*Q. How came you to know they lay together?*

*A. Because I was his Valet de Chambre, and help'd to undress and put him to Bed.*

*Q. Where was the Dutchess at that time?*

*A. The Dutchess was sometimes a-bed, and sometimes not, according as he came home, early or late.*

*Q. How long was the Dutchess with Sir John Germaine at the Cockpit?*

*A. She was at the Cockpit before I came there.*

*Q. Whether he went from Sir John Germaine's Service, after he came to live there?*

*A. He left his Service several times.*

*Q. When was the first time he went from Sir John Germaine's Service?*

*A. The first time he left his Service was in Suffolk-Street.*

*Q. How long was it before he came to live with him again?*

*A. He came into his Service again, the Summer after this present King came into England.*

*Q. What time of the Summer was it?*

*A. He can't justly tell that.*

*Q. Whether the Dutchess was there before he came to the Cockpit or not?*

*A. She*



A. She was there before.

Q. How long continued she there?

A. About fifteen Days after he came to Sir John Germaine.

Q. In what manner did Sir John Germaine and the Dutcheſs live there during thoſe fifteen Days?

A. He ſays he hath already explained that before, he uſed to undreſs him and put him a-bed together with the Dutcheſs.

Q. Where did the Dutcheſs live after ſhe went from Sir John Germaine's Houſe?

A. She went and dwelt at Fox-Hall.

Q. By what Name did ſhe go when ſhe was at Fox-Hall?

A. She went by the Name of my Lady Beckman.

Q. Whether he went with her, or continued in Sir John Germaine's Service?

A. He went with my Lady Dutcheſs for ſome time, by Sir John Germaine's Order, he was ſometimes with the one and ſometimes with the other, ſometimes one paid him and ſometimes the other.

Q. Whether Sir John Germaine went to Fox-Hall?

A. He came there ſometimes, he has ſeen him there ſeveral Nights.

Q. Whether he ſtayed all Night there?

A. Sometimes.

Q. Whether he was alone, or any Body was with him?

A. There was ſome Body lay with him.

Q. Who upon his Oath?

A. Madam the Dutcheſs, Madam Beckman.

Q. How know you that?

A. Be cauſe he undreſt him when they lay together.

Q. How often was that?

A. He can't juſtly ſay how often, but it was ſeveral times.

Q. What Service was he in when he went out of England, and upon what Occaſion?

A. He left Sir John Germaine's Service at that time when the Tryal was depending between the Duke and Dutcheſs of Norfolk.

Q. By whoſe Order did you leave that Service?

A. He deſired leave.

Q. How came you to leave that Service at that time?

A. Be cauſe he was afraid he ſhould be obliged to come and ſpeak the Truth of what he had ſeen.

Q. Whether any went with him, and who went from their Service when he went?

A. There were two Servants of the Dutcheſs's.

Q. What was their Names?

A. One is called *Suſanna Barrington*, and the other *Elleanor Vanes*.

Q. Whither did they go?

A. He was ordered by Sir John Germaine to hire Lodgings for them where they ſhould be unknown and private.

Q. What was the reaſon why they ſhould be in private?

A. He knows no other reaſon, but the difference before the Parliament between the Duke and Dutcheſs of Norfolk; he was obliged to take the Lodgings be cauſe the Wind was contrary for them to go for Holland, and took private Lodgings for them by the Order of Sir John Germaine.

Q. What became of *Suſan Barrington* after that?

A. She ſtay'd about three Weeks with him, and then Sir John Germaine came and fetch'd her back again, and where he carried her he does not know.

Q. What became of *Vanneſs* and your ſelf afterwards?

A. When the Wind favour'd we paſſed the Seas.

Q. What time of the Year was it?

A. It was about *Eaſter* that he came into Holland.

Q. What time he went from his Service and was order'd to be private?

A. It was about the time of the Tryal.

Q. Whether he hath any Paper under Sir John Germaine's Hand for his Diſcharge? We do not aſk it, but only to reſreſh his Memory.

*The Paper was dated, Eighth February, One thouſand ſix hundred ninety two; reckoning the Year to begin the firſt of January.*

Whether that was the time he left the Dutcheſs's Service?

A. Yes, about ſix or eight Weeks after he went to Sea.

Q. Where did you ſtay in the mean time?

A. In the *Minories* near the Tower.

Q. How came you to ſtay there ſo long after you were out of Service, before you went beyond Sea?

A. Be cauſe the Wind was contrary.

Q. Who went over with him, what became of *Elleanor Vanes*?

A. She went with him to Holland.

Q. Who bare her Charges thither?

A. Sir John Germaine gave him ſeven Guineas to pay for the Expences that he was at here, and to croſs the Sea.

Q. How long after that he continued in Holland, before he came into England?

A. He did not ſtay long in Holland, but went into his own Country.

Q. How long was it before you return'd to England?

A. The Summer following.

Q. Was

*Q.* Was he sent for over into *England*, and by whom?

*A.* Yes, Sir *John Germaine* sent to him often, by himself and by his Brother in *Holland*.

*Q.* When he came over in the Summer following (in Ninety two) whose Service did he come to?

*A.* He returned to Sir *John Germaine*?

*Q.* Where did he live at that time?

*A.* Where he lives at present, at the *Cock-pit*.

*Q.* Whether after he came back in the Year One thousand six hundred ninety two, he observed any Conversation between Sir *John Germaine* and the *Dutchess*?

*A.* Yes, he says he saw them come together at their House.

*Q.* What more?

*A.* He again then saw them a-bed together.

*Q.* Where?

*A.* In the House of Sir *John Germaine*.

*Q.* How often may that be?

*A.* He can't justly tell how often.

*Q.* Whether it was often or not?

*A.* No, he can't say very often.

*Q.* When was the last time he ever saw them a-bed together?

*A.* The last time he saw them a-bed was not at the *Cock-pit*.

*Q.* Where then?

*A.* It was at the *Dutchess's* own House, where, as he believes, she lives still.

*Q.* Whereabouts in the Town?

*A.* It is upon a Corner of the Park, near my Lord of *Oxford's*.

*Q.* How long ago since he saw them last a-bed together?

*A.* He can't justly tell the time, it was about two or three Months before he went away.

*Q.* Did he mean the first, second, or third time?

*A.* It was two or three Months before he went away the last time.

*Q.* In what Year did he go away the last time?

*Let him look upon any Note he hath to refresh his Memory.*

*Accordingly he look'd upon a Paper.*

*A.* 'Tis the twenty seventh of *April*, One thousand six hundred ninety six.

*Q.* Did you go away then the last time?

*A.* Yes, he says, that 'twas the last time he left his Service.

*Q.* How long before that did you see them a-bed together?

*A.* He says it was about two Months and a half before he left the Service.

*Q.* When my Lady *Dutchess* lived at *Fox-hall*, whether he can name any Body

else that was a Servant in the House at that time?

*A.* Yes, there was *Elianor Vaness*.

*Q.* What Servant was she?

*A.* She look'd to the Kitchen.

*Q.* Whether he has seen her in the Chamber when the *Dutchess* was a-bed there?

*A.* Yes, very often.

*Q.* How came she that was Cookmaid to be in the Chamber?

*A.* He says he can't tell the reason, or what business she had there, but there she was for one thing or other, best known to her self, he does not know.

*Q.* Whether when the *Dutchess* was at *Fox-Hall*, any Relations of Sir *John Germaine* came to her there?

*A.* Yes, they would come and see her.

*Q.* Who were they?

*A.* Mrs. *Brienne* and Mrs. *Judith*, he says he does not remember that Mrs. *Brienne* has layn there, but Mrs. *Judith* has.

*Q.* Where it was, and upon what Occasion he met with *Elianor Vaness* after he carried her over into *Holland*?

*A.* I met her in *Amsterdam*.

*Q.* Whether he came over into *England* with her, and upon what occasion?

*A.* I met her at *Amsterdam*, and she askt me what business I had there, whether I had a Master, and I said no.

*Q.* When was that?

*A.* About a Year and half, to his remembrance.

*Q.* Whether he came over with her the last time?

*A.* Yes, he came over into *England* with her in Company, about six or seven Weeks since.

*Q.* Where has she been since she came into *England*?

*A.* She was in Lodgings.

*Q.* Where?

*A.* He put her into private Lodgings, that she should be secure.

*Q.* Why did you put her into private Lodgings?

*A.* Because he was afraid, in the Circumstances that he is now, that some body might give them some Affront, or do them an Injury, and therefore he thought it best to be in some place of security.

*Q.* What particular Reason had he why he should take private Lodgings, or have that Fear upon him?

*A.* He says, when he was last here, Sir *John Germaine* came up one Night in a great Passion, and swore, and said, some body would betray him.

*Q.* I desire he might repeat that again?

*A.* Sir *John Germaine* came one Night up Stairs, and said, that *Nicholas* this Rogue would betray him.

*Q.* Who

Q. Who was that ?

A. He says 'twas one *Nicholas Russett*, that served him or both he can't tell, but he was in his service, that he heard these words, and that he thought in these Circumstances, the securest way would be to take private Lodgings.

Q. What brought him into *England* the last time? Whether he was spoke to, to come, and for what purpose ?

A. He says, that about two or three Years ago he hapened to meet with a Friend, and he desired him if he heard of a good place for him in *England*, to let him know of it, for he would go and serve there again.

Q. Whether he was spoke to, to come over, or was *Elianoſ Vanefs* spoke to, and what was the occasion ?

A. My Lord ask'd him if he would speak the Truth and do him any service, and whether he would bring this Girl along with him.

Q. Who was it that spake to him ?

A. My Lord Duke and my Lord *Howard*.

Q. When was that ?

A. It was about a Year ago.

Q. Where was he at that time ?

A. He was in *London*.

Q. Did he go over of his own accord, or was he sent into *Holland*, who it was that sent for him over, and for what ?

A. It was a Friend of his Acquaintance, that he desired in case he heard of a place to send for him.

Q. Who sent for *Elianoſ Vanefs* over ?

A. He says, that after he had promised my Lord Duke and Lord *Howard* to speak the Truth of what he knew, they desired him that if he met with *Elianoſ Vanefs*, to desire her to come over and speak the Truth of what she knew.

Q. How long after did you meet with *Elianoſ Vanefs* ?

A. 'Tis about twelve Months since I met with her.

Q. When was the first time that he spake to *Elianoſ Vanefs* about her coming over to speak the Truth ?

A. 'Tis about a year since.

Q. How long is it since they resolved to come over ?

A. About twelve Months.

Q. Whether he was acquainted with *Elianoſ Vanefs*, before he met with her in Sir *John Germaine's* Service ?

A. He says never.

Q. You say you went from Sir *John Germaine's* Service in *Suffolk-Street*, and you say when you came to him again, he lived in the Cockpit, Did you find *Elianoſ Vanefs* there then ?

A. He says he found her at the Cockpit.

Q. When he waited on Sir *John Germaine* in his Chamber, who waited on the Dutcheſs in her Chamber ?

A. There was *Susanna Barrington*, and *Elianoſ Vanefs*.

Q. But who waited upon her in her Chamber ?

A. *Susanna Barrington* did, to drefs her.

Q. Whether he had seen any of Sir *John Germaine's* Relations in the Chamber, when this Lady and Sir *John Germaine* were a-bed together ?

A. Yes.

Q. Name them ?

A. He says, he saw Mrs. *Brienne*, and Mr. *Daniel Germaine* there.

Q. Did you see Mrs. *Judith* there ?

A. He does not remember that he saw Mrs. *Judith* in the Room while they were a-bed together, but the other he hath seen when they were a-bed together, but at different times.

Q. Whether ever he hath seen the Dutcheſs at any other place ?

A. He has been at the Chappel with her, and else-where.

Q. Where ?

A. At my Lord *Peterborows*, and in her own House?

*Cross-Examined.*

Q. I desire he may reduce this to a certainty, what time he went out of *England*, and look upon his Note again ?

He look'd again upon his Note, and 'twas dated Eighth February, one thousand six hundred ninety two.

Q. How long after this he went out of *England* ?

A. He went away as soon as the wind was favourable.

Q. Can he recollect the time ?

A. He says 'twas sometime before *Easter*, for he came into *Holland* about *Easter*.

Q. When he told his Grace the Duke of *Norfolk* and Lord *Howard* he would be true to them, whether he was in any Service at that time ?

A. No, he was in no Service at that time.

Q. How long had he been out of employ ?

A. He has none yet.

Q. But how long had he been out of Employ or Service, before he made this Proposal to the Duke or my Lord *Howard* ?

A. He says he went away about the twenty seventh of *June*.

Q. Is it the same year his Paper speaks of, that he spake to my Lord Duke ?

A. No, 'twas not; he spake to my Lord Duke about twelve Months ago.

E

Q. But



Q. But how long had he been out of Service when he spake to my Lord Duke, when did he leave Sir *John Germaine* the last time?

A. 'Tis about three Years and half agoe, 'twill be four Years in *June* next.

Q. Has he been in any Servine since that time?

A. No, he hath not.

Q. How has he lived since then?

A. He says, he has something of his own in his own Country, upon which he may subsist some time.

Q. I think he said, he saw Sir *John Germaine* and the Dutcheſs in Bed together, in the House where she now lives?

A. Yes.

Q. Then I desire he will tell, if he knows any of the Dutcheſs's Servants that were about her at that time?

A. Yes, he does.

Q. Then, that he will name them?

A. *Henry Keymer*.

Q. What's become of him?

A. They told him he was dead, and there was *Susan Barrington*.

Q. I desire he will tell of some of the Servants that lived with the Dutcheſs at that time, besides that person that is dead, and the other which is gone beyond Sea, as they say?

Mr. Northy Answer'd. We don't say she is gone beyond Sea.

A. He does not know any other.

Q. Then that he will tell what Month he saw them in Bed together?

A. He can't Remember the Month or the day, but if they will ask him the Reason why he Remembers it, he will tell it them.

Q. If you can come to any certainty, about the time of the Year or the Month?

A. He can't say the Month, or any particular time.

Q. What Servant he saw in the House, or who let him in?

A. He had himself the Key of the Lower Room, and could come in when he pleased.

Q. Whose Servant was he at this time he speaks of; whether he was a Servant to the Dutcheſs or to Sir *John Germaine*?

A. He was Servant to Sir *John Germaine*?

Q. He was saying he could tell a Reason to fix the time, let him recollect himself of the time?

A. He can't Remember the time, but he came into the Room to bring a Clyster, and he was desired to stay without a little, till my Lady Dutcheſs got up.

Q. That he may be positive whether he

had a Key to the Lower Room of the Dutcheſs's House?

A. He says, he had a Key of the Door that goes into the *Park*, and he could come into the House by it, for it was the Key of the House.

Q. What Servant was it that brought him up, for that Key only let him into the lower Room?

A. Sometimes *Susan Barrington*, and sometimes *Henry Keymer*.

Q. What Room the Lady Dutcheſs lay in?

A. 'Tis a Room that looks into the *Park*.

Q. 'Tis not a Ground-Room, I suppose?

A. No, 'tis up Stairs.

Q. How many Stories?

A. He can't tell what Degree it was.

Q. Being ask'd that question again upon the Reading his Depositions, he says, he can't tell how many Stories, but if you please, he will describe the coming into the Room as well as he can.

Q. Describe the coming into the Room?

A. That as you come upon the left hand, there is a way to go into the Dutcheſs's Room; when you have passed the little Chamber Door, you go into a place full of *China*, and after that you come to the Dutcheſs's Bedchamber; on the other side going up Stairs, there is a little Room, where *Susan* told him she lay, and afterwards you come into a Room, where the Chimney is as he thinks on the Right Hand, and he thinks there are two Windows that look into the Street, he is not very certain, and in the Room upon the left hand, there is a Door into a great Room, and from that great Room you can go into my Lady Dutcheſs's Room. It was so at that time to the best of his Remembrance.

Q. How many Rooms are there upon a Floor?

A. There are a matter of four Rooms upon a Floor.

Q. Whether he has spoke with any Body that he knows is acquainted with this House, since he was examined here before?

A. He says, he has spoke to no body since, that has given him any account of the House.

Q. Which side of the *Park* does the Windows of my Lady Dutcheſs's Room look into?

A. Towards the Pond where the Braſs Statue is.

Q. Does the Bedchamber look towards the Braſs Statue?

A. He durst not go to look out at the Win-



Window for fear of being discovered, but he could see the Water.

Q. Whether he knows the Horse-Guards?

A. Yes.

Q. Whether he knows *Arlington House*?

A. Yes.

Q. Whether the Window does look towards *Arlington House*, or the Horse-Guards?

A. He hath been there several times, but 'twas not his business to go to the Window, but when he was in the Room he could see the Water.

Q. Whether he could tell which way the Window lookt?

A. He did not live in the House, but went there sometimes upon Messages, and when he was there, 'twas not his business to go to the Window, but he could see the Water when he was in the Room.

Q. Whether the Window was on that side of the little Door that he came in, or on the other side?

A. Upon the left hand coming in, he says he has explain'd himself as to the entering in, and he can say no more to it.

Q. Was it one or two pair of Stairs that the Dutcheſs lay?

A. He can't be positive whether one or two pair of Stairs.

Q. Who brought him up that time he brought the Clyſter?

A. *Susan Barrington*.

Q. Who told him at the Cockpit 'twas the Dutcheſs of *Norfolk*?

A. Sir *John Germaine*, her self, and the whole House told him so.

Q. Did he before that time know the Dutcheſs?

A. No.

Q. Did you never see other Women there besides this Lady?

A. Yes.

Q. Did you know all the rest that you saw there?

A. No, he did not know them all.

Q. Whether he was not told the rest of the Women were of great Quality too?

A. He never was told so, nor did he inform himself whether they were or no.

Q. At *Fox-Hall*, and at the Cockpit, I think he spake as if he undrest Sir *John Germaine* and the Dutcheſs, whether he undrest them both?

A. Not the Dutcheſs.

Q. What Year it was they were at *Fox-Hall*?

A. It was before he went to *Ireland*, and after he came from *Ireland*, but he can't precisely tell the time.

Q. Whether he has been in any Service since One thousand six hundred ninety six, when he left Sir *John Germaine's*?

A. No.

Q. Whether when he came about a Year ago into *England*, there was Application made to him in order to make a Discovery, or whether he offered of himself to make it?

A. He never did offer himself.

Q. Who was it that first askt him the question?

A. 'Twas my Lord *Howard*.

Q. Where did you meet my Lord *Howard*, and upon what occasion?

A. He says, that 'twas that Person that he had address'd himself to, to get him into Service here, that was the occasion of their meeting together.

Q. Did you know the Lord *Howard* before?

A. No.

Q. Where was the place they met?

A. He called him to his House.

Q. My Lord, or that Person?

A. He says that Person to which he address'd himself to get a Place, told him he had found one.

Q. Name that Person.

A. *Richardson*.

Q. Where does he live?

A. I don't know.

Q. Were you acquainted with him before?

A. Yes.

Q. Where had you been acquainted with him?

A. At *London*, 'tis a Woman.

Q. Whether he can describe the Room, or the Furniture of the Room where this noble Lady and Sir *John Germaine* were a-bed together, where she lives now?

A. He cannot remember any thing of the Furniture.

Q. Was it hung or wainscoted?

A. He says he can't tell, and yet he was there often.

Q. Pray who was the Clyſter for?

A. For Mr. *Germaine*.

Q. Where was it to be administred?

A. A-bed.

Q. Who was a-bed?

A. My Lady Dutcheſs was a-bed too.

Q. Was it to be administred at the same time as he and the Dutcheſs were a-bed together?

A. No.

Q. Was the Dutcheſs there?

A. He laid the Syringe to the Fire-side 'till such time as the Dutcheſs rose.

Q. Apothecaries are exact in point of time in making their Bills.

A. He says, I compos'd the Clyſter myself, but he did not compose it at the Dutcheſs's House, but at Mr. *Germaine's*.

Q. Did you stay with Sir *John Germaine* 'till all was over?

A. No, as soon as he had given it him, he went home to Mr. *Germaine's* House.

Q. Whether

Q. Whether he pretends to speak of any other time that he saw the Dutcheſs in bed with him at her Houſe in *Duke's ſtreet*, but when he carryed him the Clyſter?

A. Yes, my Lord, he ſays he has.

Q. Let him tell the times and Circumſtances.

A. He ſays he can't very well remember the times, but he had ſometimes buſineſs there to bring and carry Letters.

Q. When was that time of the Clyſter?

A. It was about two Months before he left them.

Q. Was that the laſt time he ſaw them together?

A. That was the laſt time.

Q. How long before that did he ſee them together?

A. Long before that time in the ſame Houſe.

Q. He ſays he has ſeen Sir *John Germaine* and the Dutcheſs in bed together elſewhere, did he never ſee them in bed together at the *Millbank*?

A. He has ſeen them there two or three times a-bed together.

Q. When did your Maſter order you to prepare the Clyſter?

A. He had Orders to come and wait for Mr. *Germaine* at the Dutcheſs's, and

that Mr. *Germaine* coming to the Dutcheſs's late, he order'd him to bring the Clyſter next Morning.

Q. At what time he came the next Morning?

A. He had Order to bring it at nine of the Clock, and he brought it at the appointed hour, and he waited in the little Room where *Sufannah* was, till he was called in.

Q. He ſays he waited for Sir *John Germaine* by his Orders at the Dutcheſs's till it was late, which of the Dutcheſs's Servants did he keep company with?

A. He ſays he remembers very well it was Mr. *Keymer*.

Q. Whether that time that he ſaw Mr. *Germaine* and the Dutcheſs in bed together at *Millbank*, if it was after the firſt time he was ſent out of *England*, when the Bill was depending before the Lords?

A. 'Twas after.

Q. What Year did you ſee them a-bed together at *Millbank*?

A. It was a day or two before Mrs. *Davenant* dyed. A day or two before ſhe died Mr. *Germaine* came to *Millbank*, and ſtayed there about eight Days.

*Nicola Hauſeur.*

Depo-

# Depositions of *William Bayly*.

*Die Sabbati 24. Februarii, 1699.*

William Bayly Sworn.

- Q. D'YE know *Sir John Germaine* and the Dutcheſs of *Norfolk*?
- A. Yes.
- Q. Was you Servant to *Sir John Germaine*?
- A. Yes.
- Q. In what Capacity?
- A. Three Years I wore his Livery, and three Years I was his Steward.
- Q. When did you firſt come to live with him?
- A. Three weeks before the King was Crown'd.
- Q. Was there any Converſation between *Sir John Germaine* and the Dutcheſs of *Norfolk*, d'ye know that they lived together, or kept Company one with another?
- A. No, I never knew them live together, but ſeen them keep Company together, but never ſaw any In civility between them.
- Q. Where ſaw you them in Company together?
- A. I ſaw them in Company in my Maſter's Houſe.
- Q. How long ago?
- A. About five Years ago.
- Q. Where did your Maſter then live?
- A. He lived then where he does now.
- Q. Did the Dutcheſs of *Norfolk* ever lye there?
- A. Never, to my knowledge.
- Q. What was the time ſhe uſually came there?
- A. Commonly in an Afternoon.
- Q. How often have you ſeen her there?
- A. Two or three times.
- Q. At what time did ſhe uſe to come, and at what time did ſhe go away again?
- A. She uſed to come there about four or five a Clock in the Afternoon, and might ſtay there about two or three hours?
- Q. You are upon your Oath, and pray tell whether you ever ſaw them in Bed together?
- A. By all that's good I never ſaw them in Bed together?
- Q. Did the Lady Dutcheſs uſe to come thither Mask'd, or Unmask'd?
- A. She uſe to come Mask'd, but put it off when ſhe came into the Houſe.
- Q. Who uſed to come with her?
- A. There uſed to come *Mr. Keemer* with her.
- Q. What Company? did no other uſe to come with her to *Sir John Germaine's* Houſe?
- A. Yes, another Servant, *Mr. Carter*.
- Q. Who was in the Room with them in *Sir John Germaine's* Houſe?
- A. *Mr. Keemer* ſtay'd commonly with them all the time they Dined, and after Dinner, the other Servants and I were in the next Room to them, and commonly when they had occaſion, they would call *Mr Keemer*.
- Q. Was there no other Servant but *Mr. Keemer* that they uſed to call upon?
- A. Yes, a Gentlewoman, *Mrs. Susan Barrington*.
- Q. Have you ſeen her lately?
- A. No, not theſe fix Months.
- Q. D'ye know, if your Maſter uſed to go to the Dutcheſs's Houſe?
- A. Yes, I have heard ſo, but I can't ſay ſo poſitively.
- Q. Did you ever go with them to the Dutcheſs's Houſe?
- A. No, but I have gone with them as far as the *Horſe-Ferry*.
- Q. When was the laſt time you ſaw them together?
- A. I can't tell, I have been out of my Maſter's Service theſe four Years.
- Q. How long before you left your Maſter's Service d'ye think it was, that you ſaw them together?
- A. I can't tell, but I think it might be about half a Year.
- Q. He has gone with his Maſter as far



as the *Horse-Ferry*, pray then let him be ask'd where he left his Master?

A. I left him at the *Horse-Ferry*.

Q. What Orders did your Master give you when you left him?

A. He Ordered me to go home, and keep the House.

Q. D'ye know whither your Master was gone then?

A. I may judge he went to the Dutchess, but I can't swear he went there.

Q. Did Sir *John Germaine* come home to bed that Night?

A. Some Nights he came, and some he did not.

Q. Did you carry Cloaths to him at any time?

A. I have carried Cloaths for him to Mr. *Keemer*, the Dutchess's Servant.

Q. Where did *Keemer* live, when you carried the Cloaths to him?

A. In a little Street going to the *Bowling-Alley*.

Q. Who did he live withal?

A. He told me he lived with the Dutchess, but he was a House-Keeper, and had a House there.

Q. Did you always carry cloaths to Mr. *Keemer* for your Master?

A. Sometimes I carried his Cloaths to Mr. *Keemer*, and sometimes Mr. *Keemer* came to me for them.

Q. Did you apprehend that your Master was then at the Dutchess's, or at Mr. *Keemer's*?

A. I can't tell where he was, how can I tell, I Answer as punctually as I can.

Q. When *Keemer* came to you for Cloaths, what account did he give to you, where your Master was?

A. He gave me no account.

Q. Whether did you ever see the Dutchess and your Master together at any other place, but at his own House?

A. Never.

Q. When you carried the Cloaths to *Keemer's*, did your Master lye at home that Night, or not?

A. Sometimes he lay at home, and sometimes he did not, many times my Master has been at the Dutchess of *Mazareen's*, from four a Clock this day, till twelve the next.

Q. Repeat it again, for that's material?

A. My Master has taken his Chair at his own Back-door, at four a Clock on a *Saturday*, and not come home till *Sunday* at twelve a Clock.

Q. Where has your Master been at that time, when he stay'd out all Night?

A. At the Dutchess of *Mazareen's*, and when he lost his Gold, he has sent home to me for more Gold.

Q. Did he ever send to you for any Cloaths when he was there?

A. Never.

Q. D'ye know where he was when he sent to you for Cloaths?

A. No indeed.

Q. D'ye know *Nicholas Hosier*?

A. Yes, I know him very well, I saw him here just now.

Q. Did you know him when he waited on Sir *John Germaine*?

A. Yes, he succeeded me, and I succeeded him again.

Q. You was Footman when you went to Sir *John Germaine*, when was that, and what Year did you leave off your Livery, and serve him as his Steward?

A. I can't tell.

Q. He succeeded *Hosier*, and *Hosier* succeeded him, pray let it be ask'd him, at what time he came into his Master's Service, when he succeeded *Hosier*?

A. 'Twas about the same time that the Tryal was here before.

Q. How long was it e're *Hosier* returned again, to serve Sir *John Germaine*?

A. To the best of my knowledge it was three Years, for I received and paid Mony for my Master, and *Hosier* was away all that time, *Hosier* won't deny it, if he were called in.

Q. You say that you succeeded *Hosier* at the time when the Tryal was here, how long before that time did you return to your Master's Service?

A. About three weeks before the King was Crowned, I came to my Master and served him three Years, and wore his Livery, and he was pleased after Mr. *Hosier* went away to make me lay out his Mony, to be Caterer for him, and to keep his Gold, and to the best of my knowledge, 'twas three Years before *Nicholas* succeeded me again.

Q. How long was it before he came back again to serve Sir *John Germaine*?

Q. Before I saw him in my Master's House, and that he took my place from me, 'twas three Years.

Q. Did you not see Mr. *Hosier* in *England* before that time that you went out of your Master's Service?

A. No, I beg your Lordships Pardon, I will recollect my memory, for that as I have a Soul to be sav'd, now it is come into my mind, my Master sent for *Nicholas* into *Holland* about a Year before *Nicholas* did come over; my Master told me before he came, that he would send for *Nicholas* again, and that I and *Nicholas* should have the Charge of his House. *Nicholas* came over, and we had the play at our own House, *Nicholas* staid there some time, but he did not like his business, and so he went away

again,

again, because he could not have all the Money?

*Q.* About what time did *Nicholas* come into *England*, after the Tryal was before this House?

*A.* I can't Resolve you.

*Q.* Had you no Certificate of leave, or discharge, when you left your Master's Service?

*A.* No, my Master was so kind, that he brought me immediately into the Excise, as soon as I was out of his Service.

*William Bayly Cross-Examin'd. Lunæ 26. Februarii, 1699.*

*Q.* When you carried the Cloaths to Sir *John Germaine's*, was it the time when you wore his Livery?

*A.* I carried no Cloaths to him when I wore his Livery.

*Q.* Had you any Discourse with the Dutchess's Agents since *Saturday Night*?

*A.* No, I have not seen them, nor don't know them.

*Q.* He says he saw the Dutchess of *Norfolk* at the Cockpit, at Sir *John Germaine's* House where he now dwells; pray recollect your self, that you may be positive as to the time?

*A.* I can't Resolve you as to the Year, 'tis so long ago, I believe it is about five Years ago.

*Q.* Can you be positive that it is not more?

*A.* To the best of my knowledge 'twas about five Years.

*Q.* Can you be so far certain, that you can say 'twas not more?

*A.* I can't swear it was more, but I believe it may be five Year more or less.

*Q.* You say, you saw her two or three times there, was it all in one Year, near the same time or Month, can you reduce it to any certainty?

*A.* I believe it might be in Summer.

*Q.* All in one Summer?

*A.* Yes, I believe all in one, to the best of my knowledge, there was never a Winter between the time that I saw her first and last.

*Q.* Did you know the Dutchess of *Norfolk*, before that time that you saw her in your Master's House, and took her to be the Dutchess of *Norfolk*?

*A.* I did not know her before the Tryal was here.

*Q.* Did you know her any time after that Tryal, before the time you saw her in Sir *John Germaine's* House?

*A.* I was not sure that it was she, only as I had it from Mr. *Keemer*.

*Q.* Then you don't undertake of your own knowledge to say that it was she?

*A.* I can't swear that 'twas she, but as Mr. *Keemer* told me, I don't know whether I should know her now or not, 'tis so long since I saw her, I believe it is five Years if not more.

*Q.* Did you see her before or after you saw her at Sir *John Germaine's* House?

*A.* The first time they told me 'twas she, I met her in her Coach in the *Pallmall*, with two other Gentlemen with her, a little before the Tryal was here, I followed the Coach, and the Dutchess went into some Ladies House in *Dover-Street*, and they told me the Dutchess was the first Woman that went out, this is the first time that e're I saw her, that I know of, till such time as *Keemer* told me 'twas she.

*Q.* Whether do you know *Nicholas*?

*A.* I know him very well.

*Q.* Can you tell how long it is since he came last into *England*?

*A.* No, he has been here two or three times in *England*, since I left my Master.

*Q.* How long before this Examination, saw you him, or spoke with him?

*A.* I did not see him above these three Years.

*Q.* How long before you came hither as a Witness did you see him?

*A.* I have not seen him these three Years till I came hither to be a Witness, and did admire to see him here, that a man that had got his bread under his Master should appear here against him, it is so ungrateful a thing.

*Q.* How came it that you had so much curiosity as to follow the Dutchess's Coach?

*A.* I had a mind to satisfy my own Humour.

*Q.* D'ye know how *Nicholas* lived since he was out of his Master's Service?

*A.* No, I never saw him, nor had any account of him at all, nor have seen him these three Years 'till now.

*Q.* Did you know when *Nicholas* and *Eleanor Vaness* went out of *England*?

*A.* No, I neither knew when they went, nor when they came.

*Q.* Don't you know what business he went out of *England* about, the time you took his Place?

*A.* I know not the business he went out of *England* upon.

*Q.* Did he at that time tell you he was to get away to hide himself from coming hither?

*A.* No, I heard not one Word from him at the time of his parting.

*Q.* What reason had you to say upon the first sight of *Hauseur* that he was ungrateful for coming hither?

*A.* I should think my self ungrateful to eat a Gentleman's Bread seven Years, and to do him all the Spite and Malice I could.

*Q.* Repeat those words?

*A.* I should think my self very ungrateful to prosecute, if I should do any harm to a Master that I had served so many Years, I should think my self very ungrateful, let him think of himself what he pleases.

*Q.* He added some other words?

*A.* For any thing I know it is Spite and Malice.

*Q.* Where did you live, when you followed the Dutcheſs's Coach?

*A.* At Mr. *Germaine's*.

*Q.* This Man is a Witness, and so is *Hofier*, let him explain himself what he means, and wherein there is any Difference between him and *Hofier*, for both are Witnesses?

*A.* I say, I should think my self very ungrateful, if I would do any harm to a man whose Bread I had eat so long, and had got so much money under him.

*Q.* What harm does *Hofier* do, being a

Witness against the Dutcheſs of *Norfolk*, what harm is that to Sir *John Germaine*?

*A.* I don't know.

*Q.* D'ye reckon it ungrateful to speak the truth to the prejudice of a Master?

*A.* No, I would not speak an untruth for all the Masters in the World.

*Q.* Where is there any fault more in *Hofier* than in you?

*A.* I know not.

*Q.* Whether did *Elleanor Vanes* live with Sir *John Germaine* when you liv'd there?

*A.* I know not who she is.

*Q.* This Woman that was here as a Witness.

*A.* Yes she liv'd there.

*Q.* What time went she away from Sir *John Germaine's* Service?

*A.* I know not, I cannot tell indeed.

*Sign'd*

William Bayly.



*Die Martis 5<sup>o</sup> Martii, 1699.*

Council and Witnesses being called in for the Dutcheſs of *Norfolk*, (and the Duke's Council being preſent,) the Examinations of the Witneſſes, taken Yeſterday in Short-hand and tranſcribed, were read to them, and ſubſcribed, (*viz.*)

*Die Lunæ 4<sup>o</sup> Martij, 1699.*

Thomas Hawkſworth Sworn, Depoſeth as followeth.

*Queſt.* **D**O you know *Eleanor Vaneſs*? and did you live in the Dutcheſs of *Norfolk*'s Family?

*Anſw.* I came to live with the Dutcheſs about *October*, 1691. and left her in *September*, about two Years within two Months: *Eleanor Vaneſs* lived there when I lived there, and was Cook-Maid.

*Q.* When did ſhe leave the Dutcheſs's Service?

*A.* About the beginning of *January*, or the latter end of *December*, 1691.

*Q.* On what Occaſion went ſhe away?

*A.* She was turned away, to the beſt of my remembrance, for keeping Company with *Dutch-men*.

*Q.* Whether uſed ſhe any other Office but in the Kitchen? or had ſhe acceſs to the Dutcheſs's Chamber?

*A.* Never; ſhe was not allowed to come any higher than the firſt Floor: She uſ'd to clean that Room next the Street, one pair of Stairs next the Door, and the back-Parlour even with that, but was not ſuffered to come into the Dutcheſs's Chamber.

*Q.* Who waited upon the Dutcheſs in her Chamber?

*A.* *Frances Knight*; ſhe was conſtantly in the Dutcheſs's Chamber, and uſed to warm her Bed.

*Q.* You ſay that *Vaneſs* was allowed to come no higher than the firſt Floor; Explain that.

*A.* The Kitchen is under-ground backward; that Room *Vaneſs* cleaned was even with the Street, a Ground-Room; the Landry-Maid clean'd the next pair of Stairs.

*Q.* What was the Landry-Maid's Name?

*A.* *Suſan*; ſhe's dead.

*Q.* Do you know how long?

*A.* No.

*Q.* Did you ever ſee *Vaneſs* in the Dutcheſs's Chamber?

*A.* Never in my life; I never heard ſhe was allowed to come there.

*Q.* How long is it ſince you liv'd with the Dutcheſs?

*A.* About ſix or ſeven Years, or very near it.

*Q.* D'y'e remember the Bill that was brought into Parliament againſt the Dutcheſs, while you lived there?

*A.* I came to the Dutcheſs the *October* before that Bill was brought in.

*Q.* Was *Vaneſs* turn'd away before that?

*A.* She was gone a Month or thereabouts before that.

*Q.* D'y'e remember the Month?

*A.* To the beſt of my remembrance, 'twas about the latter end of *December*, or the beginning of *January*.

*Q.* Was there any ſtir about the *Dutch Foot-Soldiers* haunting *Vaneſs*?

*A.* I never ſaw any, but have heard the Servants ſay they did.

*Q.* Can you ſay what time it was? Was it before or after the Bill?

*A.* Before I heard any thing of the Bill ſhe was gone.

*Croſs-Examin'd.*

*Q.* Where do you live now?

*A.* With Sir *Thomas Barnardiſton*.

*Q.* What Station were you in, when you liv'd with the Dutcheſs?

*A.* A Foot-man.

*Q.* Did you know *Hauſeur* then?

*A.* No.

*Q.* Where did the Dutcheſs live when you came firſt to her?

*A.* Upon the Row between the *Horſe-Ferry* and *Mill-Bank*.

*Q.* How long did you live there?

*A.* A Fortnight or thereabouts, not much more.

*Q.* Do you know where ſhe liv'd before?

*A.* No.

*Q.* Do you know Sir *John Germaine*? And, on the Oath you have taken, Did he ever come to the Dutchess's House while you liv'd with her?

*A.* I never saw him in the House; I never saw any unhandfom thing by the Dutchess all the time I lived with her.

*Q.* Did you never see Sir *John Germaine* with her?

*A.* No, never; and I had the privilege of the first Floor and the second Floor, and help'd to rub the Rooms, and sometimes I rubb'd the Lodging-Room.

*Q.* Had you the privilege of going up stairs in the Morning?

*A.* No, it was one *Peacock* that rubb'd the Room above stairs.

*Q.* Did you know *Vane's*? Was she Servant to the Dutchess when you liv'd there?

*A.* Yes, she was.

*Q.* Can you be positive as to the Time of her going away?

*A.* As near as I can tell, it was in the beginning of *January*, 1692. I came in the *October* before, and she went away the *January* following.

*Q.* Were you by when she was discharg'd?

*A.* No.

*Q.* Who paid her her Wages?

*A.* I can't tell.

*Q.* Did you never see *Vane's* in the Dutchess's Chamber?

*A.* Never.

*Q.* Did you attend at the Dutchess's Chamber in the Morning?

*A.* Not constantly; we took it by turns.

*Q.* Did you never attend in her Chamber when she was a bed?

*A.* No.

*Q.* Who was it of her Women that attended in her Chamber?

*A.* *Susan* — *Frances Knight*, and *Susan Barrington*.

*Q.* When did you see *Susan Barrington* last?

*A.* About five Years ago.

*Q.* Did she constantly attend in the Dutchess's Chamber?

*A.* She and Mrs. *Knight* carry'd Coals constantly to warm the Bed?

*Q.* How old was you when you liv'd with the Dutchess?

*A.* About Eighteen Years old.

*Q.* How old are you now?

*A.* I think, about Seven and twenty.

THOMAS HAWKSWORTH.

*Die Lunæ 4<sup>o</sup> Martij, 1699.*

*Jonas Peacock Sworn, Deposeth as followeth.*

*Quest.* DID you live with the Dutchess of *Norfolk*, in 1691?

*Ans.* 'Tis six Years since I left her Service, last *January*, or thereabouts; I liv'd two years and a half with her, or thereabouts; I came in *August*, and stay'd till *January* two years following, or thereabouts.

*Q.* Did you live with the Dutchess, when the first Tryal, as they call it, came on in Parliament?

*A.* Yes, I liv'd with her before and after.

*Q.* Did you know *Vane's*?

*A.* I knew one, whose Name was call'd *Lena*.

*Q.* What was her Business?

*A.* Below stairs in the Kitchen; I never saw her in any other Room, but the outer-Room next to the Street, and I was there all the while she was there, and after she was gone.

*Q.* Did you ever see her in the Dutchess's Bed-Chamber?

*A.* No; the Work she was employ'd about was dirty Work; I never saw her clean, but nasty, and could not eat the Victuals of her dressing.

*Q.* Was you there before *Vane's*?

*A.* Yes, I was in the House some time before her Grace came over, to help the Up-holder, and to carry Looking-glasses and Stands.

*Q.* Whence did she come over?

*A.* She came to *Mill-Bank*, but I know not when she came over: My Lady *Peterburgh* order'd me to do what I did.

*Q.* Was you Servant there to the Dutchess, before she came over?

*A.* I never saw my Lady Dutchess before she came there, except some Years before, at *Drayton*, when he liv'd with her.

*Q.* Who hired you?

*A.* I came there by the Lady *Peterburgh's* Order, and had my Victuals at my Lord *Peterburgh's*.

*Q.* Who

- Q. Who hired you?  
 A. I was not hired at all.  
 Q. How long did you live at *Mill-Bank*?  
 A. I liv'd about two years and a quarter, or somewhat more.  
 Q. What was your proper Business when you lived with the Dutcheſs?  
 A. When the Dutcheſs went abroad, I went with the Coach; and when ſhe Supp'd or Din'd at home, I laid the Cloth, Forks and Spoons.  
 Q. Did you ever wait above ſtairs?  
 A. Yes, I have waited above ſtairs.  
 Q. Who waited upon the Dutcheſs in her Chamber?  
 A. *Frances Knight*, one *Suſan*, and one *Suſannah*.  
 Q. Upon your Oath, Did you ever ſee this Woman, *Helena*, go into the Dutcheſs's Bed-Chamber?  
 A. I never once ſaw her there, all the time I ſtay'd there; I rubb'd the Bed-Chamber with a long Rubbing-Bruſh; I never ſaw her there, nor above ſtairs.  
 Q. Do you know at what time it was ſhe came to live with my Lady Dutcheſs?  
 A. Yes; ſhe came while I was there.  
 Q. Did you live with the Dutcheſs, before ſhe came to *Mill-Bank*?  
 A. I liv'd at no other place with the Dutcheſs, but at *Mill-Bank*, and at *Drayton*.  
 Q. D'ye know how *Vaneſs* left the Dutcheſs's Service? and why?  
 A. Yes; upon Complaints of Diſorders, and her ill Dreſſing the Viſtuals.  
 Q. What Diſorders?  
 A. There were Men came to the Door to enquire for her, twice, or more.  
 Q. Did you ſee the Fellows?  
 A. Yes, I ſaw the Fellows, they came to the Door in the duſk of the Evening, and I acquainted the Dutcheſs with it, and told her Grace, I did not think it ſafe for her Houſe, becauſe I had the Charge of Silver Spoons and Forks.  
 Q. What ſort of Men were they?  
 A. One of them appear'd to me to be a Foot-Soldier, in a Blue Coat.  
 Q. In what manner was ſhe put away, or left the Houſe?  
 A. Upon theſe Complaints, the Dutcheſs ſaid ſhe wou'd turn her away.  
 Q. Did you hear the Dutcheſs ſay ſo?  
 A. Yes.  
 Q. Was that before the Tryal at the Lord's Houſe, or after?  
 A. To the beſt of my remembrance, it was before the Tryal, the latter end of *December*, or the beginning of *January*, but I can't be poſitive; I think 'twas the latter end of *December*.  
 Q. Did ſhe go away before the Tryal, or not?  
 A. I think, before the Tryal, but I am not ſure: Yes, at the time of the Tryal, I remember another Cook.  
 Q. Are you ſure of it?  
 A. Yes, I am ſure of it; 'twas the Coach-man's Wife, one *Goffing*.  
 Q. D'ye know *Hauſeur*, or *Nicola*?  
 A. No.  
 Q. You liv'd at *Mill-Bank* two years? D'you know no ſuch Man?  
 A. I never heard his Name before; I had no acquaintance with him, nor ever ſaw him about the Houſe.

## Croſs-Examin'd.

- Q. Where d'you live now?  
 A. Near *Huntingdon*; I Board in a Houſe there.  
 Q. How long have you been out of Service?  
 A. Ever ſince I left my Lady-Dutcheſs.  
 Q. How d'you live then?  
 A. I Board in a Houſe; I follow no Employment, but live on my own, except to teach Children two, three or four, out of Charity.  
 Q. When came you to the Dutcheſs's Service firſt.  
 A. I ſerv'd her about ten or twelve years ago, but I can't remember the precise Time, 'tis ſo long ſince.  
 Q. How long did you live with her then?  
 A. I liv'd with her about half a year at *Drayton*, in *Northamptonſhire*; I went about *November*, and ſtay'd till *Lady-Day* following.  
 Q. How long was it before you came to live with her the laſt time?  
 A. I can't tell.  
 Q. You ſay you came to live with her about two years and a quarter; What time was that?  
 A. I can't tell, but that may be eaſily found; I liv'd with her about ſix years ago, or thereabouts.



Q. How long did you leave the Dutcheſs, after the Hearing came on, in this Noble Houſe?

A. I don't know ; it was about a year and three quarters, or two years, I can't be poſitive.

Q. Was it after the Tryal began?

A. Yes ; I think the Tryal began in *January*, and 'twas a year after it began.

Q. Can't you be poſitive what time you came to live with the Dutcheſs?

A. I came about *Auguſt* to *Mill-Bank*, but the Dutcheſs was not come then, but the *October* following my Lady-Dutcheſs came.

Q. Where did the Dutcheſs live then?

A. I don't know ; I was at the Lady *Peterburgh's* ; I help'd her Servants to carry things, and to get things ready.

Q. Did you know where the Dutcheſs liv'd then?

A. No ; ſome ſaid ſhe liv'd in *Flanders*, others in *Holland*, and ſome in *France*.

Q. Was you never at *Foxhall* while the Dutcheſs liv'd there?

A. I was never there while the Dutcheſs lived there, if ſhe did live there.

Q. Was you never there where ſhe did live?

A. When no body liv'd there, I have ſeen the Houſe where they ſaid ſhe did live.

Q. How long ago is that?

A. I know not how long ago, but 'twas in the Summer-time.

Q. How came you to take notice of that Houſe more than the reſt of the Houſes in *Foxhall*? Who was it told you the Dutcheſs liv'd there?

A. I think it was one that was \_\_\_\_\_

Q. You ſaid the Dutcheſs went ſometimes by Water ; Did you go along with her at that time?

A. Yes, I did, with ſome other Company.

Q. Was you ever ſent to the Houſe, to fetch Goods from thence?

A. No.

Q. Who went with you, when you went with the Dutcheſs there?

A. One Mrs. *Boufflers*, and two or three other Ladies.

Q. D'you know Sir *John Germaine*?

A. I never ſaw him, but in his Coach, as he was going along the Street ; I never ſaw him in any Houſe, or any other place, fitting or going, but in his Coach.

Q. Was you never at his Houſe?

A. I never was at his Houſe, nor at any place where he lived.

Q. You ſay you were admitted to the Dutcheſs's Chamber, to rub the Room?

A. Yes, I was.

Q. Did you not ſee *Vanefs* there?

A. No.

Q. Can you take it upon your Oath, that you never ſaw her there?

A. No, I never ſaw her there, but I ſaw *Susan Barrington* there.

Q. What Service did *Susan Barrington* do there?

A. She help'd to dreſs and undreſs her Grace, and to mend Linen, as I think.

Q. When ſaw you her laſt?

A. 'Twas about the 9th, 10th, or 11th of *Auguſt* laſt, at the *George-Inn*, in *Huntingdon*.

Q. D'you know where ſhe lived then?

A. She was at *Huntingdon* then, and came with the Lady-Dutcheſs to take a Stage-Coach for *London* ; ſhe was at the *George-Inn*, in *Huntingdon*, I think, about *Auguſt* laſt.

Q. You ſay you liv'd at the Dutcheſs's Houſe at *Mill-Bank*, before the Dutcheſs came thither ; Did *Vanefs* come with her, or was ſhe hired after?

A. I think ſhe came with the Dutcheſs.

Q. D'ye know whence the Dutcheſs came, when ſhe came there?

A. As I have heard, ſhe came from *Foxhall* : When my Lady-Dutcheſs went thither by Water the Summer after, I was told, that my Lady liv'd at ſuch a Houſe in *Foxhall*.

Q. Didn't you know that my Lady-Dutcheſs liv'd at *Foxhall*?

A. I never knew my Lady-Dutcheſs till ſhe liv'd at *Mill-Bank*?

Q. What Account had you, at the Dutcheſs's Houſe, where ſhe was then?

A. People ſaid ſhe was in *Flanders*.

Q. D'you know when *Vanefs* came to live with the Dutcheſs?

A. I believe ſhe came to live with the Dutcheſs at *Mill-Bank*.

Q. D'you know when ſhe was diſcharg'd out of her Service?

A. I think 'twas the latter end of *December*, or the beginning of *January* ; I think ſo, but I don't ſpeak poſitively.

Q. Was you by, when her Wages were paid?

A. No.

Q. Have you ever ſeen her ſince?

A. No ;

A. No ; I never saw her, from that hour to this.

Q. Where have you liv'd since you left the Lady-Dutchess's Service? and how? Have you any Estate?

A. I have a small Matter to live on ; I live near *Huntingdon*, I was born near there, 'tis my Native Place, I have liv'd there about four or five Years, or within seven Miles of that Place, or thereabouts.

Q. Did *Vane's* dress the Dutchess's Dinner when she liv'd there? for it seems she was not good enough to serve you.

A. Yes, she did dress the Dutchess's Dinner, but I did not care to eat Victuals of her dressing.

Q. When did you first complain to the Dutchess, that Men follow'd *Vane's*? or that you apprehended danger by her being there?

A. I can't tell.

Q. Was she discharg'd immediately after that?

A. I think she was discharg'd in a very little time after.

Q. You say, there were some other Ladies that went with the Dutchess to *Foxhall*; Can you name them?

A. Mrs. *Marshall*, and some others, but I can't be positive.

Q. Did you know Mrs. *Briane*?

A. No ; I never heard her Name before.

Q. Did the Dutchess eat always at *Peterburgh-House*, or *Mill-Bank-House*, as you call it?

A. Sometimes she eat abroad, and sometimes at home.

Q. Who dress'd her Victuals when she eat at home?

A. *Lena*.

Q. What d'ye mean by *Mill-Bank-House*?

A. *Peterburgh-House*.

Q. Who did you hear say the Dutchess liv'd at that House at *Foxhall*?

A. The Dutchess was going by Water, and told the Ladies then, that that was the House she had liv'd at, at *Foxhall*; and walking in the Garden of the said House, told 'em so.

JONAS PEACOCK.

Die Lunæ 4<sup>o</sup> Martij, 1699.

Frances Knight Sworn, Deposeth as followeth.

Quest. HOW long have you liv'd in the Dutchess of *Norfolk's* Family?

Ans. Twenty seven Years, or upwards.

Q. With whom did you live all that time?

A. With the Lady-Dutchess's Father, the Lady *Peterburgh*, and the Dutchess.

Q. Did you live with the Dutchess when she liv'd at *Mill-Bank*?

A. Yes, I liv'd with her at her first coming there.

Q. Have you been with her ever since?

A. Yes.

Q. Did you know *Vane's* in the Dutchess's Family at *Mill-Bank*, and what Employ she had there?

A. Yes, I know her very well: She was in the Kitchen.

Q. Did you use to be in the Dutchess's Bed-Chamber, and about her Person?

A. Yes, I was the first in the Morning there, and the last at Night, constantly.

Q. Did you know *Eleanor Vane's* there? and did she use to come into the Dutchess's Chamber?

A. She never came there.

Q. Where us'd she to employ her self?

A. In the Kitchen.

Q. Was she well enough in Cloath's, cleanly enough, and fit to come into the Dutchess's Chamber?

A. No, she was not.

Q. What time went she away? and upon what account?

A. My Lady put her away, because Soldiers came and ask'd for her, and sent for her to Ale-houses about Ten a Clock at Night. I went up one Morning, and complain'd of her to my Lady-Dutchess, and told her that Soldiers haunted her, ask'd for her, and sent for her to Ale-houses at Ten a Clock at Night: And my Lady-Dutchess said, She would not keep a Servant that kept ill hours.

Q. Was this before the Tryal?

A. Yes, my Lady put her away, upon my speaking this.

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Q. Do

- Q. Do you know why she was put away?  
 A. Yes, for having Soldiers haunt her Company.  
 Q. Consider well what you say.  
 A. Yes, my Lords; I speak what my Conscience tells me: Here I am before the Lords, I must speak Truth.  
 Q. How far can you recollect your self, if it was before the Tryal, or not, that she was put away.  
 A. It was before the Tryal.  
 Q. How long?  
 A. I can't remember; I think it was about a Quarter of a Year, I can't tell exactly, but it was near upon.  
 Q. How near was you to the Dutchess? What was your Employment?  
 A. I help'd to get her to bed, as her Chamber-Maid.  
 Q. Did *Eleanor Vaness* never undress her?  
 A. No, never in this world.  
 Q. Did you never know her come into the Dutchess's Chamber?  
 A. Never, never. Oh, fie! Never, indeed.  
 Q. D'ye know *Nicholas Hausfear*?  
 A. I don't know him: There were many ask'd for Mr. *Keemer*, but I did not know them, for he has many Acquaintance.  
 Q. Did you know *Thomas Hawsworth*, your Fellow-Servant?  
 A. Yes, he came when my Lady came to *Mill-Bank*, Mr. *Peacock* came before, they were both Servants together.

Frances Knight *Cross-Examin'd*.

- Q. You say you liv'd Twenty-seven Years and upwards with the Dutchess and her Mother? Do you live with the Dutchess still?  
 A. Yes.  
 Q. How long is it since you liv'd with her Mother?  
 A. After the Dutchess was marry'd, I came to live with her and my Lord-Duke.  
 Q. Have you been in her Service ever since?  
 A. Yes.  
 Q. After the Duke parted with my Lady-Dutchess, Where did she go to live?  
 A. She liv'd at *Mill-Bank*, and no where else, that I know of.  
 Q. Came you to live with her soon after her Marriage? and have you lived with her ever since? and did she ever live at *Foxhall*?  
 A. I never lived with her at *Foxhall*.  
 Q. Then you have not lived with her ever since?  
 A. I have liv'd with her ever since, I have taken my Oath, and as near as I can tell you.  
 Q. Where did the Dutchess live before she came to *Mill-Bank*?  
 A. She liv'd at *Foxhall*.  
 Q. Did not you live with her there?  
 A. No; I broke my Leg, and was brought home to her Mother's, and stay'd there a Twelvemonth; Mr. *Peters* was my Surgeon, he can tell it. I came here to speak the Truth.  
 Q. Don't be angry.  
 A. No.  
 Q. Did you continue with the Dutchess till you broke your Leg?  
 A. Yes; and when I broke my Leg, I went home to her Mother's.  
 Q. When left you Dutchess after she parted with my Lord-Duke.  
 A. I left her at *Mill-Bank*.  
 Q. Do you know the Question that's ask'd? When did you leave the Dutchess after she parted with the Duke?  
 A. I know no such Questions as you ask. I speak the Truth, as well as I can.  
 Q. Where did my Lady-Dutchess go, when you left her?  
 A. I went away lame, and cou'd do her no service.  
 Q. Where did you come to my Lady-Dutchess again, when you were well.  
 A. At *Mill-Bank*.  
 Q. Was you ever with her at *Foxhall*?  
 A. I was not there, because I was lame.  
 Q. Was you ever at *Foxhall*?  
 A. I told you, I broke my Leg.  
 Q. Was you ever at *Foxhall*, or not?  
 A. I tell you, I was lame.  
 Q. Was you ever at *Foxhall* at any time?  
 A. I tell you I was lame; I give you an Answer to your Question. I tell these Noble Lords, that every word I speak is Truth.  
 Q. But you are sworn to speak the Whole Truth.  
 A. I speak the Truth. Why should you do so?

Q. Was



Q. Was you ever with the Dutchess at *Foxhall*?

A. I was not able to be there with her.

Q. Was you there with her, or not?

A. I was not able to go thither.

Q. Was you never there?

A. I was not able to go thither.

Q. Was you ever there or not with the Dutchess?

A. No, I never was at *Foxhall* in my life, but at *Mill-Bank* and *Whitehall* I have. *Memorandum*, In this Interlineation was alter'd, upon reading over her Examination, Yes, I have been there, but I did not stay there.

Q. Was you ever there with the Dutchess, or not?

A. I was not there: I tell you I was not there, I was lame.

Q. Was you never there with the Dutchess at any time?

A. No, I tell you I was lame: I was never there with the Dutchess.

Q. Where was the Dutchess before she came to *Mill-Bank*?

A. That I can't tell.

Q. Where was she when you broke your Leg?

A. I left her at *Mill-Bank*, with her Mother.

Q. Where did you find her, when you came again?

A. I found her at her Mother's

Q. Can't you tell where she was in the mean time.

A. No.

Q. Was you never told by any of the Family where she was at that time?

A. No.

Q. Did *Vane's* come to the Dutchess when she liv'd at *Mill-Bank*?

A. Yes.

Q. How long did she live with her after.

A. I can't tell; but a short time.

Q. Do you know *Susanna Barrington*?

A. Yes.

Q. When did you see her last?

A. About Three Weeks ago.

Q. Is she not in the Dutchess's Service still?

A. I'll tell you the Truth; She receiv'd a Letter from *Flanders*, acquainting her that her Mother was dead. She was very much afflicted with it: And when the Dutchess came in, I told her Grace that *Susan* had receiv'd a Letter that her Mother was dead, and I did desire my Lady to give her leave to go to *Holland*, and she's there.

Q. Did you see the Letter?

A. I saw it.

Q. Was it from her Mother, or from her Sister?

A. Yes, 'twas from her Sister, That her Mother was dead.

Q. Was *Susanna Barrington* in the Dutchess's Service when this Bill was depending.

A. No.

Q. How long is it since you received that Letter.

A. 'Tis about Three Weeks ago.

Q. How long is it since she went.

A. A Fortnight, to Day.

Q. Did you see her at any time since these Three Weeks?

A. No, No.

Q. Did you not live with her in the House? and did you not see her?

A. She has been gone about a Week.

Q. D'you know Mrs. *Judith*?

A. No.

Q. D'ye know Mrs. *Briane*?

A. I have heard of her Name, but am not acquainted with her.

Q. Had you any Discourse with *Vane's*, when she came to *Mill-Bank* to live with the Dutchess?

A. No, I never lik'd her Discourse.

Q. Did you ever hear the Dutchess say that she liv'd at *Foxhall*?

A. No.

Q. Do you know Sir *John Germaine*?

A. I know him by sight.

Q. Did you ever see him at the Dutchess's.

A. No.

Q. Did you never see him at *Mill-Bank*, or at her House here.

A. No, my Lords, never.

Q. Did *Vane's* come along with the Dutchess when she came to *Mill-Bank*? or was she hired after her return.

A. She came after her return to *Mill-Bank*.

Q. What time went she away?

A. I can't tell the Day; that's a hard Question. She went away, on my speaking to the Dutchess, that she was haunted with bad Company.

Q. Did not she dress the Dinner, when the Dutchess dined at home.

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A. Yes,

- A.* Yes, but she never dined at home but very seldom.  
*Q.* Can't you tell when *Vane's* went away? *A.* No.  
*Q.* Did you know *Nicholas Hausfear*?  
*A.* No, I know no such Man. There were many People came to Mr. *Keemer*, Lords Servants, and others, I don't know such People.  
*Q.* You have heard that the Dutchess liv'd at *Foxhall*. *A.* Yes.  
*Q.* At what time did she live there?  
*A.* I can't tell you; I was sick in bed.  
*Q.* You may recollect about what time was it.  
*A.* I was lame in *March*, this Month: I can't tell what Year.  
*Q.* D'you know what House she lived in?  
*A.* Yes; 'twas one Sir *Thomas Grosvenor's*, at *Mill-Bank*.  
*Q.* I ask you what House she liv'd at, at *Foxhall*?  
*A.* I know not.  
*Q.* How came you to know the Dutchess liv'd at *Foxhall*?  
*A.* You ask what I can't tell you.  
*Q.* You daren't tell.  
*A.* Yes, I'll tell the Truth, before all the House of Lords.  
*Q.* You said she liv'd at *Foxhall*?  
*A.* No, I never said it.  
*Q.* Whence came the Dutchess, when she came to *Mill-Bank*?  
*A.* She came from the Place she did; I did not ask her the Question, I durst not be so bold.  
*Q.* Can't you tell when she came to *Mill-Bank*? nor from what Place she came?  
*A.* I can't tell the Day when she came. I don't ask from what Place People come.  
*Q.* When did you know Sir *John Germaine* first?  
*A.* I saw him first with my Lord-Duke there, at his House in the *Square*.  
*Q.* Did you never know him keep Company with the Dutchess?  
*A.* No, but only with the Duke of *Norfolk* there; I speak in the Presence of God.

Sign'd,  
FRANCES KNIGHT.

*Die Lunæ 4<sup>o</sup> Martij, 1699.*

William White Sworn, Deposeth as followeth.

- Quest.* DID you live with the Dutchess of *Norfolk*, for some Years past?  
*Ans.* I liv'd with her since the first Week of the first Tryal, about six, or seven, or eight Years ago.  
*Q.* What care was there taken about the Dutchess's Door into the Park?  
*A.* I generally went out the first in a Morning; the Door had two Bolts, a Cross-Barr, and an Iron Chain; besides, these I unbolted every Morning, and unbarr'd, when I went out early.  
*Q.* Did you ever hear or understand that *Hausfear* had a Key to that Door?  
*A.* I never knew any thing of it, nor know not of what use it could have been; for he could not come in, till the Door was unbolted.  
*Q.* Say positively, whether ever you have heard, that this Man had a Key to that Door.  
*A.* I never heard of it.  
*Q.* Did you ever see him come in at that Door? *A.* Yes.  
*Q.* How? Upon what Occasion?  
*A.* I happen'd to be going out my self, and to open the Door for him. His Business, I was told by my Lady-Dutchess's Maid, was, That she had lent Money to a Man in *Holland*, and she wrote a Letter to be carry'd by this Man to her Sister, to get the Money; and she sent another Letter by one *Bull*, to carry to *Holland*, to get the Money, as she told me.  
*Q.* Did you let him in?  
*A.* I unbolted the Door, and let him in.  
*Q.* Did you find that this Man used to come freely to the House, at that Door, by any Key?  
*A.* No, I never knew it.  
*Q.* Who did he come to?  
*A.* To *Susan Barrington*.  
*Q.* Did you ever see him above stairs with her?  
*A.* No; he might come in, and I not see it.  
*Q.* Did the Dutchess or Servants say any thing that he had Leave to come in?

A. I

*A.* I never examin'd that ; because any body that had Business had leave to come in, as Tradesmen, and others.

*Q.* Did they tell you in the House, that *Hausieur* was at liberty to come into the House with a Key ? *A.* No, Never

*Q.* Had you ever any Discourse with *Hausieur* ?

*A.* I was one day coming from *Change*, and met Mr. *L'Estrange*, and this *Hausieur*. *L'Estrange* told me that he was ill of the Gripes. I told him, that the best thing for it was Burnt-Claret ; and he and I and *Hausieur* went to a Tavern in *Smithfield* : And while we were together, *Hausieur* reflected upon his Master, saying, His Master had used him ill, and deserved to be ill used. Mr. *L'Estrange* heard these and some more words ; and Mr. *L'Estrange* told me that he spoke to that purpose, he was resolv'd to be reveng'd of his Master.

*Q.* What did he say of his Master ?

*A.* He said his Master had used him very ill ; he had many threatening Words ; he said his Master was an ill Man, and deserved to be ill used, and the time would come when he should repent it.

*Q.* When did he say these words ?

*A.* 'Twas about *Michaelmas* two Years ago, or a Year ago, I can't tell which.

*Cross-Examin'd.*

*Q.* You say you liv'd with the Dutchess the first Week of the first Tryal ; Was *Vane's* there at that time ? *A.* She was gone before I came.

*Q.* How long ?

*A.* I can't tell ; I never saw her there, to the best of my remembrance, but have heard there was such a one in the Family.

*Q.* Did you know *Hausieur* ?

*A.* I see him come in at the Back-Door.

*Q.* Whose Servant was he then ? *A.* The first time I did not know ; but a little after, I was told he was Sir *John Germaine's*.

*Q.* What Occasion had he to come to the Dutchess's House ?

*A.* I know not, but about the business of the Letter.

*Q.* How often did you see him there ? *A.* Two or three times, or more.

*Q.* With whom ? *A.* With *Susan Barrington*.

*Q.* What was his Business with her ?

*A.* About the Money, as she told me. He went along with that Woman ; she sent a Letter by him ; and she sent Letters by some other *Dutchmen*, into *Holland*, about the Money.

*Q.* Did he ask for any other Servant ? *A.* Not that I know of.

*Q.* Did you see him above stairs with her ?

*A.* I never saw them in any Apartment but that place below, where the Lumber is, near the *Park-Door*.

*Q.* D'you know *Susan Barrington* ? *A.* I know her very well.

*Q.* D'you know where she is now ?

*A.* Her Mother dy'd about the 10th. of *January*, and then I saw her all in Tears, and she went away after this Account of her Mother's Death.

*Q.* When did you see her last ?

*A.* I have not seen her this Fortnight or Month, that I know of, that I could distinguish her from another Woman, except she had a Mask on.

*Q.* How long before this Tryal saw you her ?

*A.* About a Fortnight. She gave me an Account that her Mother died the 10th. of *January*, in *Holland*.

*Q.* When did she go away ?

*A.* I did not take notice of the Time she went away ?

*Q.* Did you know *Hausieur* at any other Place but at the Lady-Dutchess's ?

*A.* Never, but as I have seen him in the *Park*, and with Mr. *L'Estrange*.

*Q.* Was you never with him at Sir *John Germaine's*. *A.* Never.

*Q.* D'you know Sir *John Germaine* ?

*A.* After I had lived with the Dutchess some time, I was told by some in the street, that that was his Coach ; and his Livery, and that he was the Man that there was so much Noise about.

*Q.* Did you never see him in the Dutchess's House ?

*A.* I never saw him in no part of my Lady-Dutchess's House, nor in no Apartment, and I am the only Man that goes up and down Stairs.

*Q.* Did you never see him in the Dutchess's Company at any other Place ? *A.* No.

*Q.* Did you constantly lie at the Dutchess's House ?

*A.* When the Dutchess was last at *Drayton*, I lay at *Richmond* two or three Nights.



- Q. Did you lie constantly there, when the Dutchess was there ?  
 A. I was sick near a Month, and all that time I lay at my Wife's ; but most commonly lay at the Dutchess's since she is come to *Duke-street* to live.  
 Q. You say you used to open the Door in the *Park* first in a Morning ; What time did you use to open it at ?  
 A. At Six, Seven, or Eight a Clock in a Morning ; there was no certain hour, but I generally open'd that Door.  
 Q. Did you ever know *Hansferr* come in at any other Door but that ?  
 A. Yes ; one wet Day he came in at the Street-Door, before the Porter, and all the Servants, and ask'd for the same Woman.  
 Q. Did he never ask for any other Body ?  
 A. I never heard him ask for any but *Susan Barrington*, for she was his Country-woman.  
 Q. If *Nicholas* got in at the *Park-Door*, Could not he get up Stairs ?  
 A. If he could get in at that Door he talks of, he could not get into the Dutchess's Apartment ; for there was a Room betwixt that, where the Plate and Jewels lay, that no Key could open : that if he could get up two Pair of Stairs, he could not get in there.  
 Q. If he had a Key, and got in at any Door ; Cou'dn't *Susan Barrington*, when he came in, without any difficulty, lead him round the House.  
 A. I can't say but she might, but I never saw him, but below stairs with that Woman, and then he went away without going up stairs.  
 Q. Did you never see him bring any thing to the House ? A. No.  
 Q. You nam'd one *L'Estrange*, that you saw with him at the Tavern ; What is he ?  
 A. He was my old Fellow-Servant at the late Duke of *Norfolk's*.  
 Q. What Discourse had you with him then ?  
 A. He complain'd to me of his being ill, and I gave him the best of my Advice.  
 Q. What time was it that *Nicholas* had those threatening Words against his Master ?  
 A. About Ten, Eleven or Twelve a Clock at Noon.  
 Q. How long ago is it ?  
 A. I can't tell if it be a year, or two year ; 'twas a little after *Michaelmas* ; but whether it be one year or two year, I can't tell.  
 Q. Cou'dn't Mr. *L'Estrange* tell ?  
 A. I ask'd Mr. *L'Estrange*, and he cou'd not tell.  
 Q. Whose Servant was *Nicholas* then ?  
 A. He was no body's Servant then. He rail'd against his Master at that time for turning him away.  
 Q. Did you not know who was his Master a year or two ago ?  
 A. He told me he was out of Place.  
 Q. Did you not know him to be Sir *John Germaine's* Servant, when he came to the Dutchess's ?  
 A. I did not know it, when I first saw him and *Susan* together ; but some time before he went away, I heard he was his Servant.  
 Q. But you say, you did not know Sir *John Germaine* about two years ago.  
 A. I did not know him, so as to speak to him.

WILLIAM WHITE.

Die Lunæ 4<sup>o</sup> Martij, 1699.

Matthew Mac-Dondell Sworn, Deposeth as followeth.

Quest. HOW long have you liv'd with the Dutchess of *Norfolk* ?

Answ. Four Years, at *Lady-Day* next.

- Q. In what manner was the Door going out to the *Park* kept ? Had any body a Key to it that was not of the Family ? Did it use to be left open ?  
 A. 'Twas not to be left open ; 'twas very unsafe to be left open : besides, it was bolted and lock'd.  
 Q. Was there particular Care taken of that Door ?  
 A. Yes, I my self bolted it very often at Night.  
 Q. Did you often unbolt it in a Morning ? A. Yes.  
 Q. Whether or not, the time that you lived there, did you know any body that was not of the Family come with a Key to open that Door ? A. Never.  
 Q. Did you know *Hansferr* or *Nicholas* ? Had he a Key to that Door ?  
 A. I never knew it.  
 Q. Did you ever see him come in at that Door ?  
 A. I open'd that Door for him once or twice, when he rung.  
 Q. When was that ? A. In an Evening.  
 Q. What did he come about ? A. I do not know ; but he ask'd for *Susan*, my Lady-Dutchess's Servant.

Q. Did

- Q. Did you ever see him go up stairs? A. I never did hear he went up in my life.  
 Q. When he ask'd for Susan, Did he go up then?  
 A. No; I call'd her to him, and I never saw him go up stairs.  
 Q. Did you stay with him all the while Susan was with him?  
 A. No, I had no more business: I went my way.  
 Q. Was Nicholas, when he rung, in the Park, or at the Inner-Door?  
 A. In the Park.

Cross-Examin'd.

- Q. Did you know whose Servant Nicholas was?  
 A. I did not know, nor I ask'd no Questions.  
 Q. How often have you seen him at the Dutchess's? A. Three times.  
 Q. Did he always ask for Susanna Barrington?  
 A. One time he ask'd for Mr. Keemer.  
 Q. Who was Mr. Keemer? A. He was the Dutchess's Servant.  
 Q. Did you use to stay with him? or did you leave him?  
 A. No. To tell you the plain Truth, I thought he came to Court Susan, and did not stay with him.  
 Q. Did you ever see him up stairs, in Susan's Room? A. I never saw him there.  
 Q. What Employment have you, under the Dutchess? A. I am her Foot-man.  
 Q. When did you see Susan last? A. On Tuesday Seven-night, in the Morning.  
 Q. Not since? A. No.  
 Q. Where did you see her then? A. At the Dutchess's House.  
 Q. What became of her after that?  
 A. She said her Mother died lately in Holland, and she was going there.  
 Q. When did you hear her say so?  
 A. I heard her say so several times before she went away, a Month, or a Quarter of a Year before she talk'd of going to Holland.  
 Q. Upon your Oath, Don't you know that she is at the Dutchess's?  
 A. I know not of her being there.  
 Q. Can you take it upon your Oath, when she was first wanting?  
 A. I saw her on Tuesday Seven-night last, in the Morning.  
 Q. How came you to know she was gone, if you don't know the Time when she went?  
 A. I did not know she was gone, till I went home from the House here.  
 Q. Who told you she was gone? A. The Servants.  
 Q. She was there when you came hither. A. On Tuesday Morning I did see her.  
 Q. Has the Dutchess another in her Station?  
 A. There is one Mrs. Cambell, that dresses my Lady-Dutchess, but she does not live there.  
 Q. Did she use, in Susan's time, to come and dress the Dutchess?  
 A. Yes, she us'd to come sometimes.  
 Q. Has the Dutchess taken any body to do Susan's Work? A. I know not of any.

Signed,

MATTHEW X MAC-DONNEL.

Die Lunæ 4<sup>o</sup> Martii, 1699.

Mr. Robert Welburne Sworn, Deposeth as followeth.

Quest. **W**Hat Account can you give of Mr. L'Estrange's having Notice to be a Witness?

Ans. I was told by the Dutchess, that L'Estrange had been with her, and gave her an Account of some Particulars between White, and him, and Nicholas; That having the Gripping in the Guts, they went into a Tavern together; That he heard White and Nicholas talk together very loud, but he told me he had the Gripes, and could not so well mind what he said, but he heard him use hard words against his Master, but he could not remember that he said he would be Reveng'd upon his Master; but he would recollect himself, and if he could remember, he would say what he could. He told me, he had been bred in the Norfolk Family.

Q. Did you ask Mr. L'Estrange about this Matter?

A. Yes, Mr. L'Estrange told me, he remembered they were together, and heard Nicholas speak very hard, ill words against his Master, but he could not be positive what they were; but what he could remember, he would speak, if that would do the Dutchess any service. He desired my Lady-Dutchess would give him Notice the Night before, and he would appear.

Q. When was this? A. 'Twas Tuesday or Wednesday: I think 'twas Wednesday.

Cross-Examin'd.

Q. Did the Lady-Dutchess tell you what Mr. L'Estrange said?

A. Yes; that gave me the Occasion to speak of it. He said, he heard Nicholas say hard,

hard, ill Words against his Master, but not that he heard him say he would study to be reveng'd. Perhaps, says he, there might be some other words. That he was in the Kitchen, and would endeavour to recollect who was there besides; and if he had two or three Days time, he would enquire.

Q. Did you let him know that you was concern'd for the Dutcheſs?

A. Yes; and he told me he would tell what he could say in this Matter; and he should be ready to appear at any time, if that would be for the Dutcheſs's advantage.

Q. Did he tell you he was going abroad, into *Holland*?

A. Not one word.

Q. Did you intimate to him, when the Dutcheſs was to make her Defence?

A. I think I did, but I can't be poſitive; but he took no notice to me, that he would not be there.

Q. D'you know Mr. *La Fountaine*?

A. Yes, I know one *La Fountaine*.

Q. Is he in the Dutcheſs's Service?

A. I believe not.

Q. D'you know whether he is at *Drayton*?

A. I have ſeen him at *Drayton*.

Q. Did he live with Sir *John Germaine*, that you know of?

A. Never, that I know of.

Q. When ſaw you *Suſan Barrington*?

A. I can't be poſitive; but I think, not this Month or Six Weeks.

Q. Han't you ſeen her ſince this Bill was brought in.

A. Poſitively, I have not.

ROBERT WELBORNE.

*Die Lunæ 4<sup>o</sup> Martij, 1699.*

*Eleanor Monfort Sworn, Depoſeth as followeth.*

Queſt. TELL the Lords if you know *Nicholas Hauſeur*, and on what Account you came to know him?

Anſw. This *Nicholas* lodg'd two or three times at my Houſe. My Husband was a *Dutch-man*, and he was a *Dutch-man*; they were like Brothers, they lov'd one another.

Q. What know you of this Man, this *Nicholas*?

A. My Husband told me, that this Man *Nicholas*, I did not know no other Name he had; my Husband told me, that he had a Deſign to rob his Maſter, and that he knew where his Gold and his Jewels lay, and had made Faſe-Keys, and would watch his opportunity, when his Maſter was at Play, or out of Town, and left the Keys at her Houſe.

Q. Your Husband told you ſo?

A. Yes, my Husband bid me ſend for this Man; theſe were his laſt Dying Words.

Q. Your Husband had a ſad Miſfortune. When waſ't your Husband told you ſo?

A. When he was in Priſon.

Q. How long ago is that?

A. About eight or nine Years ago, laſt *Chriſtmas*. I would not have your Lordſhips think my Husband was ſo bad a Man; he was only Condemn'd and Executed for Changing Ten Pounds of his own Money.

A. What were your Husband's Laſt Dying Words?

A. He deſir'd me to ſend for this Fellow, and deliver thoſe Things he left at my Houſe. I ſent for him. He came, and had ſome Keys in a Drawer, that my Husband told me he left there. He took two or three Keys, and put them in his Pocket, and look'd mightily out of Countenance.

Q. What did your Husband ſay to you?

A. He bid me give *Nicholas* the Keys, and bid him have a care, and keep good Company.

Q. When was that?

A. A Week or Fortnight before my Husband was Executed.

Q. Did you acquaint *Nicholas* with what your Husband ſaid of him?

A. No, an't pleaſe your Honours; I only told him, my Husband charg'd me to give him thoſe Keys: but being in trouble, and having a great many Enemies, I talk'd no further with him.

Q. What did *Nicholas* ſay to you?

A. He look'd out of Countenance, and told me he would come and ſee me another time, but he never did: ſo that I did not ſee him again till I ſaw him in the *Meuſe*, and then he told me that he would come to ſee me; but he never did, but always ſhun'd me.

Q. How long have you known *Nicholas*?

A. Theſe eight or nine Years. I knew him when he was Foot-man to Sir *John Germaine*, and I knew him when he was his Gentleman. I knew him when he went, and I knew him when he came. He is like a Sea-Rat, he comes and goes when he pleaſes. I hope in God Almighty it will be conſider'd by this Houſe, that ſuch a Fellow's Witneſs ſhould not be taken in ſuch a great Concern.

*Signum,*

ELEANOR X MONFORT.

Then the Dutcheſs's Council prayed that *Mac-Donnel* may be Examin'd, as to the withdrawing Witneſſes, and that it be taken in Writing. Which was Agreed to, and he Examin'd.

Then the Dutcheſs's Council proceeded to Examine other Witneſſes, and their Evidence taken in Short-Hand.

Then



Then Mrs. *Pitts* being called for, and not appearing ; *William Godfrey* being Sworn, said to this effect :

**I** Went to serve Mrs. *Pitts*, on *Friday* Morning : When I came to her House there was no body. A Woman with a Pitcher of Water went in : I ask'd her for Mrs. *Pitts* ? She said, She was not at home. I shew'd her the *Order*, and left a Copy of it upon the Table. She was loth to receive it : She said, the Lady would be within quickly. The Woman's Name was *Olivet*. The last night I went again, and a Woman came out, and said Mrs. *Pitts* was not at home. Then she spake in *French* to me. I did not understand her. I left a Note for her to Attend this Day.

Then the Dutcheſs's Council pray'd, that some Agreements between the Duke and Dutcheſs, in 1694, may be read out of the Deeds executed for that purpose. Which was agreed to, and read accordingly.

*Die Martis 5° Martij, 1699.*

*Francis Negus Sworn, Depoſeth as followeth.*

*Queſt.* **I** Deſire Mr. *Negus* may be ask'd, Whether the Dutcheſs of *Norfolk* did not ſend ſome Meſſage by him ? The Words I don't confine him to ; but, Whether the Meſſage ſent by him to my Lord-Duke, was not to this purpoſe, That notwithstanding the Articles, ſhe deſir'd to know from his Grace, in what manner ſhe ſhould live, and that ſhe would be govern'd by his Directions ?

*Anſw.* I think it was much about the time of the Tranſaction of theſe Articles the Dutcheſs ſent to me. Mr. *Longueville* was Council for the Duke, and Sir *Thomas Powys* for the Dutcheſs. Mr. *Longueville* took what care he could ; and when they came to talk of their living ſeparately, I took it only to be an apprehenſion and fear that my Lord-Duke would confine the Dutcheſs to ſome Houſe. My Lady-Dutcheſs ſent for me. I waited on her, and ſhe expreſs'd her ſelf very ſenſibly of the Miſfortunes of the Duke and her ſelf, that ſuch Differences ſhould have been between them ; and ſhe was deſirous to let my Lord-Duke know, and deſired me that I would let my Lord-Duke know it, that ſhe would avoid all Company that ſhould give him any Offence, and that ſhe would not ſo much as pay a Viſit but where he liked. I acquainted my Lord-Duke with ſomething to this purpoſe ; for ſhe often ſaid to me, more than once or twice, that if ſhe happen'd to die before my Lord-Duke, ſhe would leave him her Eſtate : And I know I have ſaid ſo to my Lord-Duke.

*Q.* Whether, from that time, do you know that the Duke ſent any Meſſage of Complaint to the Dutcheſs, to the Place where ſhe liv'd, that he would have her live in any other way ?

*A.* I know nothing of that Matter.

*Q.* Do you know whether my Lord-Duke ever deſired her to come and live with him ?

*A.* I never heard of any ſuch thing.

*Q.* Did he ever ſend to her, to avoid any Company ? *A.* I never heard of any ſuch thing.

*Q.* Whether had you any Directions to attend the Duke, That he would give way in a Controverſy between the Dutcheſs and a Noble Lord of this Houſe, whether he would wave his Privilege ? *A.* I have great reaſon to deſire Sir *Thomas's* Favour in this Matter. I know not what he aims at. I was call'd to the Barr before, to ſpeak the Truth as to the Matter of the Privilege : I know not what he means by it.

*Q.* I meant it only as an Inſtance of a Civil Meſſage between the Duke and Dutcheſs, owning her as his Wife, and that this was a Meſſage that beſpoke a good underſtanding between them ? *A.* Will you have me to give an Anſwer to Sir *Thomas*, my Lords ? I confeſs the Duke did ſend for me, and ask'd how the Settlement and Agreement were betwixt the Duke and the Dutcheſs, becauſe of this Matter of the Privilege.

*Q.* I did not mean that ; but only as a late Inſtance of the Duke's owning the Dutcheſs ſo far ?

*A.* When the Duke ſent for me, he would know, whether by the Agreement he was oblig'd to let her have the Privilege ? I ſaid, I underſtood it ſo ; and tho' he had no mind to do it, but as he had waved his Privilege, in the Caſe of an Unkle, he would do it for her.

*Q.* What would have been the Conſequence, if the Duke had not waved his Privilege ? Would not that have defended her from a Suit ? *A.* That you may make uſe of as you pleaſe.

Sir *Thomas Powys*. I would only make this uſe of it, as an Inſtance of Kindneſs between the Duke and Dutcheſs.

FRANCIS NEGUS.

After the Examination of *Francis Negus*, he being before Sworn, the Dutcheſs's Council declared, they had finiſhed their Evidence.

Whereupon, the Duke's Council deſired to call a Witneſs or two, to ſupport *Nicholas Hauſeur's* Reputation. Then *William Allen* was Sworn, and Examined.

*Die Martis 5° Martij, 1699.*

*William Allen Sworn, Depoſeth as followeth.*

*Queſt.* **D'**You know *Nicholas Hauſeur* ?

*Anſw.* Yes.

*Q.* How long have you known him ? *A.* Three Years.

*Q.* Did you not know him before that time. *A.* I knew him about Three Years ago.

K

*Q.* Had

Q. Had you any Dealings before that time?  
 A. I had Dealings with him when he liv'd with Mr. *Germaine*.  
 Q. What were his Dealings? A. As honest and fair as any Man could desire.  
 Q. What Office had he, under Mr. *Germaine*? A. He was Cook to Mr. *Germaine*, I suppose.  
 Q. What? Was he Cook to him? A. He bought in the Goods, and he paid me honestly for what he bought.

*Cross-Examin'd.*

Q. What Trade are you? A. A Butcher.  
 Q. Then he paid you his Master's Money for his Masters Goods?  
 A. Yes, he paid me very honestly.  
 Q. When saw you him last? A. I saw him when I was Summon'd here, by the Order of this House, but not before, of late.

Sign'd,

WILLIAM W. ALLEN.

The Duke's Council moved for Copies of the Examinations and Journals. Which was granted, and then the Council withdrew. The following Orders were made.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That Copies of the Examinations, Signed by the Witnesses this Day, and Entry in the Journal, be delivered to either Side; And that the Examinations taken this Day in Short-hand, be transcribed, in order to be read to the Witnesses to Morrow.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That to Morrow at Twelve of the Clock this House will proceed to hear the Examinations taken this Day, read to the Witnesses, relating to the Duke and Dutcheſs of *Norfolk*, and all Lords Summoned to Attend.

*Die Mercurij 6° Martij, 1699.*

After the Examination taken Yesterday, relating to the Duke and Dutcheſs of *Norfolk*, were read to the Witnesses, and they signing them, the Dutcheſs's Council moved to have Copies of the Depositions taken on either side, and then withdrew.

*Die Martis 5° Martij, 1699.*

Matthew Mac-Donnel Sworn, Depoſeth as followeth.

A. I Was going to Mr. *Strange*'s Houſe, and I ſaw my Lord *Howard* of *Eſcrick* coming that way, and he went to the Door and knock'd. I made up to the Door, and a Girl open'd the Door. My Lord ask'd if Mr. *Strange* was within? And ſhe answer'd, Yes. Then I went to the Door, and ask'd if Mr. *Strange* was at home? She answer'd, No, he went away on *Thursday*. I ask'd, by Packet-Boat, or how? She ſaid, by long-Sea. I thought ſhe told my Lord he was within, and ſo I came away.

Signum,

MATTHEW X MAC-DONNEL.

*Die Martis 5° Martij, 1699.*

Richard May Sworn, Depoſeth as followeth.

Queſt. D<sup>O</sup> you know *Nicholas Hanſeur*?

A. I never ſaw him till *Sunday* Fortnight laſt.

Q. Where ſaw you him then. A. At my Lord Duke of *Norfolk*'s. I had a Command from my Lord Duke to take him in there.

Q. Where? A. To lodge him in my Lord-Duke's Houſe. I am his Houſhold-Steward, he Commanded me to provide for him in the Houſe.

Q. I don't deſire you ſhould do any thing unbecoming to my Lord-Duke; but you are upon your Oath, and you muſt tell the Truth? A. I'll freely tell what I know.

Q. Can you give me any Account where he was before that time?

A. I never ſaw nor heard of him till then.

Q. Hath he been there ever ſince? A. Yes, I made Proviſion for him, by his Grace's Command.

Q. Do you know *Vanefs*? Where hath ſhe been? A. On *Sunday* was Fortnight ſhe came thither likewiſe, and I was order'd to take care for her.

Q. Where was ſhe Lodged? A. In my Lord-Duke's Houſe in *St. James's-Square*.

Q. Has ſhe been there a Fortnight? A. Yes, a Fortnight laſt *Sunday*, and coming here to attend the Lords.

Q. Had ſhe the liberty of the Houſe? or was ſhe kept cloſe?

A. They were kept only as they deſired themſelves: No body was denied liberty to ſee them. They deſired to be there, ſooner than any place.

Q. D<sup>O</sup> you know that thoſe People have been ſent for, and how long before they came?

A. I was never privy to any thing of that nature: I had no knowledge of their Names, nor whence they came.

Q. Do you know of any Money iſſued out for their coming over? A. Not one Penny.

Q. Do you know of any Reward they have had, or are to have.

A. I know not of any Reward they have had, or are to have.

RICHARD MAT.

*Die*

*Die Martis 5<sup>o</sup> Martii, 1699.*

*Christopher Raine Sworn, Deposeth as followeth.*

*Quest.* **A**RE you Servant to the Duke of Norfolk?

*A.* Yes.

- Q.* D'you know *Hausieur*? *A.* I have seen him, but am not acquainted with him.  
*Q.* How long is it since you saw him? *A.* It is within this Fortnight.  
*Q.* Did you not see him any time further off? *A.* No; I am positive of it.  
*Q.* Where did you see him first? *A.* In *St. James's*.  
*Q.* In what Place there? *A.* At his Grace's House.  
*Q.* Hath he been there ever since? *A.* Yes.  
*Q.* Was there a Woman call'd *Vanes* with him? *A.* Yes.  
*Q.* Did they come at the same time? *A.* Yes.  
*Q.* How long ago? *A.* A Fortnight; it may be, not so much.  
*Q.* Had they the liberty of the House, to take notice where they were?  
*A.* They had liberty to go where they pleas'd.  
*Q.* Did they go abroad since they came there? *A.* I can't tell; not to my knowledge.  
*Q.* D'you know whether they went out of the House, upon any Occasion?  
*A.* Not to my knowledge.  
*Q.* Who brought them there? *A.* I don't know.  
*Q.* D'you know whence they came? *A.* No.  
*Q.* Did you not understand where they lodg'd before?  
*A.* No. I am Stranger to them both; I never saw them before.  
*Q.* Saw you them when they came first? *A.* No; I was not at home.

*CHRISTOPHER RAINE.*

*Die Martis 5<sup>o</sup> Martij, 1699.*

*Edward Cotter Sworn, Deposeth as followeth.*

*Quest.* **A**RE you Servant to the Duke of Norfolk?

*Ans.* Yes.

- Q.* D'you know *Nicholas Hausieur*? *A.* I did not know him but since this Tryal.  
*Q.* How long ago is that? *A.* About a Fortnight.  
*Q.* Do you know where he had been before? *A.* No: I knew nothing of him, where he was, nor what he was.  
*Q.* Came *Helena* the Dutchwoman with him? *A.* Yes, the Woman came with him since the Tryal; I never saw them before.  
*Q.* Did you never know them go out of Doors since they came, but to this House?  
*A.* Never, no where else.  
*Q.* Who brought them to the Duke's? *A.* I know not.  
*Q.* Whence came they, d'you know? *A.* I can't tell.  
*Q.* Did they never report in the House, whence they came? *A.* No, I never heard where they lived, nor how they behaved themselves.  
*Q.* Do you know whether ever any Reward was given them? *A.* No.  
*Q.* I desire he may be ask'd, Whether he has not known before, for some time past, within this Fortnight or Three-Weeks, more or less, Meetings in *Somerfet-House*; in order to this Tryal? *A.* The thing is this; I was one Night at *Somerfet-House* with my Lord-Duke, 'twixt Six and Seven a Clock; but I can't tell how long it is, whether it be Three-Weeks or a Month; it is no more, that I know.  
*Q.* What were you there about? *A.* I went there with my Lord-Duke.  
*Q.* Upon your Oath, Was there any thing then done there, relating to this Tryal?  
*A.* Upon my Oath, I did not know, but 'twas concerning my Lord *Howard* of *Escrick*.  
*Q.* Was he there with the Duke? *A.* Yes.  
*Q.* Did you know who they went to? *A.* No.  
*Q.* Upon your Oath, Don't you know whether they went to *Madam Pitts*, or no.  
*A.* They went to some House, but I don't know her Name they went to.  
*Q.* Was there any body else there, but my Lord-Duke, and my Lord *Howard*?  
*A.* God knows. My Lord-Duke call'd me to the Door, and sent me on a Message; and I went, and came again.  
*Q.* Who did you see there, when you came again? *A.* I saw none but my Lord-Duke, and another that I did not know.  
*Q.* Who did you see go in? *A.* None but my Lord-Duke, and my Lord *Howard*.

*EDWARD COTTER.*



*Die Martis 5<sup>o</sup> Martij, 1699.*

Francis Huddleston Sworn, *Deposeth as followeth.*

*Quest.* UPon your Oath, D'you know of any Meetings, relating to this Tryal, that have been within some time past?

*A.* For Meetings, I know not any thing of them.

*Q.* Do you understand the Question? *A.* I know nothing of any Meetings.

*Q.* Have you not been at any place where any thing has been done, relating to this Tryal, against the Dutcheſs of *Norfolk*?

*A.* I don't understand any thing of the Tryal. I know nothing of the Dutcheſs of *Norfolk*.

*Q.* Pray give a positive Answer; Have you not been present, or do you know of no Meeting, relating to the Proceedings against the Dutcheſs of *Norfolk*?

*A.* I never was at no Meeting.

*Q.* Who do you live with? *A.* I live with my Lord *Howard*.

*Q.* Was you ever present at *Somerſet-Houſe*, where my Lord *Howard* and Others met?

*A.* I have been at *Somerſet-Houſe*, but know nothing of any Concerns.

*Q.* D'you know *Vaneſs*? *A.* I know no ſuch Perſon.

*Q.* Do you know *Nicholas*? *A.* I don't know him.

*Q.* Pray answer positively; Do you know one *Nicholas*, call'd *Hauſeur*?

*A.* I know ſeveral of that Name, but I know not who you mean.

*Q.* I mean, one that liv'd with Sir *John Germaine*?

*A.* I know him not. I had never any Converſation with any body that liv'd with Sir *John Germaine*.

[ *Nicholas* call'd in. ]

*Q.* Did you ſee any ſuch Man as appears here, at *Somerſet-Houſe*?

*A.* I know no ſuch Man as is call'd *Nicholas Hauſeur*. I know ſeveral call'd *Nicholas*, but none of the *Hauſeurs*.

*Q.* Look upon this Man; Have you ſeen him before, or not?

*A.* Yes: I have ſeen him twice or thrice, but I knew not who you meant before.

*Q.* How long is it ſince you ſaw him firſt? *A.* About a Fortnight ago.

*Q.* Have you not ſeen him at *Somerſet-Houſe*? *A.* Never.

*Q.* Where did you ſee him? *A.* In *Gerrard-ſtreet*.

*Q.* Was that all the Places you ſaw him at? *A.* I ſaw him no where elſe.

*Q.* Whoſe Houſe did you ſee him at? *A.* At Captain *Soames's* Lodgings.

*Q.* Did you not ſee a *Dutchwoman* there, one *Helen Vaneſs*?

*A.* There was a Woman with him; I don't know her Name.

*Q.* Did you ſee her at Captain *Soames's*? *A.* She was with this Gentleman there?

*Q.* Did you ſee her at no other Time or Place? *A.* No.

*Q.* Who elſe was there then? *A.* Captain *Soames*, my Lord *Howard*, and one or two more. I was but at the Door. I have ſeen this Man go in. I was but a Foot-man, waiting at the Door. I knew not the others that were there.

*Q.* Did you know no more that were there?

*A.* My Lord *Howard* was in the Houſe, but I know not if he was with them.

*Q.* Did you ever ſee *Helen Vaneſs* before that time.

*A.* I have ſeen the Woman ſince, but never ſaw her before.

*Q.* Did you never ſee her any where elſe?

*A.* Never any where elſe but at this Houſe, going and coming.

*Signum,*  
FRANCIS *D.* HUDDLESTONE.

The Council being withdrawn, the following Orders were made.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Copies of the Examinations, read to, and ſigned by the Witneſſes to Day, be deliver'd to either Side.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That this Houſe will peremptorily proceed to Hear the Duke of *Norfolk's* and Dutcheſs of *Norfolk's* Council, to ſumm up the Evidence on both Sides, on *Friday* next, at Twelve of the Clock, and all the Lords ſummoned to attend.

The Evidence having been ſumm'd up, the Lords, after long Debate, and a Division of the Houſe, Committed the Bill, by a Majority of Sixteen.

Whereupon, the Dutcheſs immediately preferred the Petition recited in the Order 8<sup>o</sup> *Martij*.

*Die Veneris 8 Martii 1699.*

**U**Pon reading the Petition of *Mary Dutcheſs of Norfolk*, ſhewing that by the Bill now depending for diſſolving the Marriage between the Duke of *Norfolk* and your Petitioner, her Joynture and Marriage Agreements are to be ſet aſide, and other things in the Petition mentioned, and praying to be heard by her Council, touching the ſeveral Claims and Intereſt, and ſeveral Clauſes in the Bill; It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Petitioner ſhall be heard by her Council to morrow at eleven of the clock, at the Committee of the whole Houſe, to whom the ſaid Bill ſtands committed; at which time ſhe is to produce her ſaid Marriage Agreement and Writings, as in the Petition is ſet forth: At which time alſo the Dukes Council may be preſent, if he think fit.

*Matth. Johnſon Cler. Parliamentor.*

Upon which an Order was made for Council to prepare a Clauſe for the 10000 l.

The Dutcheſſes Council having reſuſed to joyn in drawing any clauſe, tho they adviſed a Petition about the Joynture and Marriage Agreement, the Dukes Council prepared a clauſe, to which the Lords added a few words, and paſt it as in the Bill. The Bill being ſent down to the Commons, the Dutcheſs preſented the following Petition.

## To the Honourable the Knights, Citizens and Burgeſſes in Parliament aſſembled.

### The Humble Petition of *Mary Dutcheſs of Norfolk*.

*Sheweth,*

**T**Hat for putting an end to all differences between the Duke of *Norfolk*, your Petitioners Husband, and your Petitioner, ſeveral Articles of Agreement were entred into, and executed in *April 1694*, by the ſaid Duke, your Petitioner, and your Petitioners late Father, the Earl of *Peterborough*, whereby, and by Deeds executed purſuant thereunto, the Duke had his then deſired advantage, and hath fully enjoyed the benefit thereof; that your Petitioner about the time of perfecting the ſaid Deeds, ſignified to the ſaid Duke by Mr *Negus*, that ſhe ſhou'd always readily comply with all ſuch orders in her way of living and converſation as he would think fit to appoint. Notwithſtanding which, and without ever ſignifying any diſſatisfaction to or with your Petitioner, and without any manner of notice, or previous proceeding in the common and ordinary courſe of Juſtice, and to take from your Petitioner that legal Tryal in the Eccleſiaſtical Court, which by the Laws of this Realm (as ſhe is adviſed) ſhe is entitled unto, did on the 16th of *February* laſt exhibit a Bill in the Houſe of Peers, entituled, *An Act to Diſſolve the Duke of Norfolk's Marriage with the Lady Mary Mordant, and to enable him to marry again*. Upon which the proceedings were ſo very quick, two Witneſſes lately brought from beyond the Seas being forthwith examined againſt your Petitioner, and your Petitioner being charged with facts ſuppoſed to be committed many years ſince, and long before the date of the ſaid Articles, could not be prepared to make her defence as ſhe wou'd have done, if the proceedings had been againſt her according to the known Laws of this Land. The places of abode of the Witneſſes produced againſt her being yet not known or diſcovered to your Petitioner: And your Petitioner having notice that the ſaid Bill is paſſed the Houſe of Lords, and ſent down for the concurrence of this Honourable Houſe:

Your Petitioner prays ſhe may be heard by her Council at Law and one Civilian againſt the ſaid Bill, before any proceedings be had thereon by this Honourable Houſe.

And your Petitioner ſhall pray, &c.

L

*M. Norfolk,*

A day

A day being appointed by the House of Commons for the Committee to proceed, the Duke caused the Papers following to be published.

T H E  
Duke of NORFOLK's Case :  
W I T H  
R E A S O N S for passing his BILL.

**I**F want either of Precedent for a *Parliamentary Divorce*, before going through the tedious and ineffectual Methods of *Doctors Commons*, or of Demonstration of Fact, have hitherto deprived the Duke of Norfolk of that Relief against his Wife's Adultery, which the *Divine Law* allows ; The late Statute made in the like Case, and the Coming in of Two, who while the Duke's former Bill was depending, had been sent away to prevent that Discovery which they now make ; cannot but be thought to remove all Objections against an Act of Parliament, not only for the benefit of the Duke, but of the *Publick* : as a means to preserve the Inheritance of so great an Office, and Honours, to persons of the true Religion.

And since *Bishop Coxens* his Argument in the *Lord Rosse's Case* has made it Evident, That those *Canons* which govern the *Spiritual Court* in this matter, are but the remains of *Popery* ; nothing can be now requisite to satisfy the most scrupulous of the *Reformed Religion*, but to set the Duke's Proof of his Lady's Adultery in a true light.

The Reputation which the *Dutchess* had maintained, of Wit and Discretion, made it difficult for many to believe, that she could be surprized in the very Act of Adultery, as had been formerly proved. And though then it appeared, That one *Henry Keemer* lived with the *Dutchess*, while she went by a feigned Name at an House hired for her at *Foxhall*, by *Sir John Germain's* Brother ; and that *Nicola*, who then lived with *Sir John*, used to receive Wood sent from the *Dutchess* to *Sir John's* House by the *Cockpit* ; the withdrawing of *Nicola*, and carrying with him the *Dutch Maid*, equally entrusted with the secret on *Sir John's* side ; left no evidence of their constant conversation, but *Keemer* since dead, and *Susannah Barrington*, who had the like trust from the *Dutchess*.

*Keemer*, though very unwillingly, some years since confessed his living with the *Dutchess* at *Foxhall*, where he pretended she was obliged to conceal herself for Debt : and what share *Susannah* had in the secret was unknown, till *Nicola* appeared : *Nicola* coming into *England* some time since, in expectation of a Service, express'd his readiness to discover what he knew, and to endeavour to bring with him the *Dutch Maid*.

She proves, that for two Months the first Summer after the King came for *England*, *Sir John Germain* and the *Dutchess* lived together as Man and Wife, and were seen in Bed together by her, Mr *Bryan*, and his Wife, *Sir John's* Sister : and that *Nicholas Hausseur*, *Sir John's* Valet de *Chambre*, used to be assisting to him ; as the *Dutchess's* Woman, *Susannah Barrington*, was to her, at going to Bed, and rising.

She proves the like Conversation at *Foxhall*, and the *Dutchess's* House at the *Milbank*, till the Duke's first Bill for a Divorce was depending ; within which time *Nicholas Hausseur*, by *Sir John's* Order, carried away her, and *Susannah Barrington*, with intention of going for *Holland*, to prevent their being examined to what they knew ; but the Wind proving contrary, they could not go till the Bill was rejected, and then *Sir John* fetch'd back *Susannah*, who was most useful to the *Dutchess* ; but *Hausseur* went for *Holland* with *Ellen*.

He confirms *Ellen's* Evidence in every particular ; and besides the Persons mentioned by *Ellen*, as privy to *Sir John's* lying with the *Dutchess*, names *Sir John's* Brother *Daniel*. *Nicholas* having been found very trusty, his Master sent for him to return to his Service ; and gave him the opportunity of proving the continuance of the same Adulterous Conversation at several Times and Places, from the Summer 1692. to the 26th of April 1696. He swears he had after his return to *Sir John's* Service, seen them in Bed together at *Sir John's* House,

at

*Eleanor  
Vannefs.  
Exam. 22.  
Feb. 1699.*

*Nicholas  
Hausseur.*



at the *Cockpit*, and at the *Dutchess's* Houses at *Millbank*, and where she now lives; and used to be let into the *Dutchess's* Apartment by *Susannah Barrington*, or *Keemer*. Nor can any man, who shall read the ample Testimonials given Mr *Hauseur* by Sir *John*; by the last of which it appears that he served him faithfully as his *Steward*, reasonably question *Hauseur's* Credit.

Another who had been advanced by Sir *John* from his Footman to Mr *Hauseur's* <sup>William Bayly.</sup> place, and from thence to a good Office in the Excise, very unwillingly confirmed the Testimony of *Hauseur* and the *Dutch Maid*, not only as to the time of their going from the Service of Sir *John* and the *Dutchess*; but though being no Foreigner he could not so easily be sent away to prevent discovery, and therefore was not let so far into the Secret as *Hauseur* and the *Dutch Maid*; yet he swears the *Dutchess* used to come mask'd to his *Masters* House; that he has gone with him as far as the *Horse-ferry* towards her House at the *Millbank*; that then his Master sometimes lay out all Night, and the next morning he has carried Linen and Cloathes for his Master to *Keemer's* House, or *Keemer* has fetched them from him: And this he proves to have been since the rejecting the former Bill, and about Five Years since, when he was succeeded by *Hauseur*, as before he had succeeded *Hauseur*.

Two other Foreigners, *La Fountain*, who had lived with Sir *John*, and was Served with Summons at the *Dutchess's* House at *Drayton*; and *Hugonee*, who ran away from the Lord *Haversham's* since Summons was taken out against him, seem to have had the same Trust that *Hauseur* had: for both declared, That nothing should oblige them to betray their Master's Secrets: One said, No Court could dispense with his Oath of Secrecy: and both declared they would immediately go beyond Sea. Summons have been taken out for Mr *Brian* and his Wife, and Sir *John Germain's* Brother (who are, or lately were in Town) to confess or deny what *Nichola* and *Ellen* appeal to them for; and it cannot be imagined that Sir *John* should chuse the Honour of being thought to have to do with a *Dutchess*, before the clearing her and himself from the Imputation, by bringing his Relations to disprove the charge, if what is sworn to be within their knowledge is false.

And if Sir *John's* Vanity should prevail with him, at least it is to be presumed that his Relations would be more just to him and the Lady, than to suffer any thing to pass against them, which they could with Truth and Justice prevent.

But since none of them appear, the World will believe their absenting more than a thousand Witnesses, in confirmation of what Mr *Hauseur*, *Ellen* and *Baily*, have sworn. Whose Evidence not only stands untouch'd by any thing offered by the *Dutchess's* Witnesses, but is plainly confirm'd by them in the principal parts.

This being the nature of the proofs, 'tis observable,

1. That there never yet was any Case of this kind, where the Evidence was not liable to greater objections than can be made to this.

Though in the latest Case of this kind, there was full Conviction of the Ladies having Children while she lived separate from her Husband, and the presumption was very violent whose the Children were; yet this was but presumption, and that was weakened by the presumption in Law that they were the Husbands; especially, since there was no direct proof of the Lovers ever lying with her.

2. Thoin that case, by reason of the interval of Parliament, and fear of the deaths of Witnesses, a Suit was begun in *Doctors Commons*, 'twas taken from thence while the Suit was depending; therefore that was rather an Objection against proceeding in Parliament than an Argument for it.

3. In that Case, several Witnesses were examined at the Bars of both Houses who had not been examined at *Doctors Commons*, nor any notice given of their Names before their examination.

4. It appears by that Case, and the present, that the examinations in Parliament are more solemn and certain than those of the Spiritual Court; which depend too much upon the honesty of the Register, or his Deputy.

5. Before that Case, Parliaments have either broken through the Rules which bind the Spiritual Court, as in the case of the Duke of Norfolk, 1 Eliz. n. 31. where the Parliament ratified the Marriage, as lawful according to Gods Law; tho. protracted and letted, by reason of certain Decrees and Canons of the Popes Law; or else have dissolv'd a Marriage where there had been no application to *Doctors Commons*, as in the case of Mrs *Wharton*, 2. & 3. W. M. who had been married to Mr *Cambel*; and yet there had been no examination of Witnesses, but what had been before the two Houses.

37. H. 8.

So long before, in the Case of Sir *Ralph Sadler*, upon proof before the two Houses that the Lady *Sadler's* former Husband had deserted her, and disappeared for Four Years before she Married Sir *Ralph*, the Parliament Legitimated her Children by Sir *Ralph*.

Whereas some Object against the passing the Bill, as if it would countenance a Jurisdiction in the House of Lords to examine to such matters, in the first Instance or Originally; the Objection would be the same if it had begun, as it might, in the House of Commons; but in truth would be of equal force against most private, and several publick Acts, occasioned by the examination of Witnesses, or Notoriety of Fact.

Since therefore the Duke has so long, and so often in vain endeavoured to be freed from a Lady, publicly famed and proved to have lived with Sir *John Germain*, as his Wife; the Duke's former disappointments cannot but be powerful Arguments for his speedy obtaining that Justice which the Spiritual Court cannot give him, their power reaching no further than to that liberty of living as *she list*, some years since settled by Articles: But as none of less Art and Oratory than her Counsel could have turned this into a Licence to commit Adultery, *if she list*, or a Pardon afterwards; had there not been evidence of her acting according to such Construction, the Duke would have hoped she had repented of the former Injuries he had received from her; but now hopes she shall not longer continue to bear the Name of his Wife, and put him in danger of being succeeded by Sir *John Germain's* Issue, or deprive him of the expectation of leaving his *Honours, Offices, and Estate, to a Protestant Heir.*

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Bishop

# Bishop COZENS's Argument,

Proving, That *Adultery works a Dissolution of the Marriage.*

Being the Substance of several of Bishop Cozens his Speeches in the House of Lords, upon the Debate of the Lord Ross's Case.

*Taken from Original Papers writ in the Bishop's own Hand.*

**T**He Question is indefinitely to be spoken of, *Whether a Man being divorced from his Wife, who hath committed Adultery, and is convicted of it, may Marry himself to another Wife or no, during the Life of her which is divorced.*

The place in *St Matthew the 5th*, repeated again *St Matthew the 19th*, has great perspicuity: If it be not lawful for any man to put away his Wife, and Marry again, except it be in the Case of Fornication, (for the displacing the Words, by putting the Exception before the Marriage, cannot alter the Sense); then *a contrario*, it must of necessity follow, That if the Wife be put away for Fornication, the Husband by the tenor of Christ's Words is left free to Marry again; which Freedom is not allowed to the Adulterers herself, nor any man else that shall Marry her.

*St Mark* and *St Luke* have been opposed to *St Matthew*; and it has been said, that Christ's words in *St Matthew* did not properly belong to Christ's Disciples, or the Christian Church, as the words in *St Mark* and *St Luke*, which are absolute, do; which is a Saying that neither I, nor, I think, no body else ever heard of before: For Christ's Sermon in the Mount was spoken to his Disciples, and especially belonged to Christians.

'Tis clear they are spoken to his Disciples; for he says to them, that they are the Salt of the Earth, and the Light of the World; and that they are blessed, when they suffer persecution for his Name's sake; which no man will say or apply to the Jews.

It is true, that in the 19th Chapter of *St Matthew*, Christ answers the Scribes and Pharisees, who came to tempt him with their Question, *whether it was lawful for a man to put away his wife for any cause*, as they said *Moses had permitted them to do*. But the Answer that Christ gave them, That it was not lawful, but only in the case of Adultery, for men to put away their wives, and marry another, was a Rule which concerned all Christians to observe for ever after; and for that reason was recorded by *St Matthew*.

The words in *St Mark* and *St Luke* are not to be taken absolutely, but to be supplied and understood by his words in *St Matthew*, as in many other cases is clear, viz. the Thief upon the Cross, Baptism in the name of the Father, Son and Holy Ghost, &c. whereof many instances may be brought, as the destruction of *Nineveh*, &c.

But for Christ's words, the Exception confirms the Rule, and infers a Concession, that in the Case of Fornication, the putting away one Wife, and Marrying another is allowed. It is alike with divers other his Exceptions, which are found in Scripture: For brevity, I will instance in this one (viz.) *Except ye repent, ye shall all likewise perish*. Upon which Text, if I or any Bishop else were to Preach, I believe we should not discharge our Duty, unless we should tell the People, That if by the Grace of God they did repent, they should not perish.

The exception here, *si aut, nisi*, unless, is parallel with the *1 Kings 3. 18*. *None were in the house, except we twain*; they Two therefore were, others were not.

Such Exceptions proceeding from natural Equity, are tacitly implied in Laws, tho pronounced in general terms.

But as to the Exception here, the Words are not capable of any other Sense than as I have observed; for except that Restraint be referred to Marrying again, the Sense would run thus, *Whoever puts away his wife commits Adultery*; which stands not with Truth or Reason; since it is not the Dismissal that is Adulterous, but the Marriage of another. It is, therefore, the plain drift of our Saviour to teach the Pharisee, that the Marriage of a Second Wife after a dismissal of a former, upon any other cause, except for fornication, is no less than Adultery; thereby inferring, That upon a just Dismissal for Fornication, a second Marriage cannot be branded with Adultery.



Besides, the Pharisee's Question [*Is it lawful for a man to put away his wife for every cause*] was not without a plain implication of Liberty to marry another, which our Saviour well knowing, gives a full Answer, as well to what he meant, as what he said; which had not been perfectly satisfactory, if he had only determined that one part concerning Dismissal, and not the other concerning Marriage, which Clause if Two Evangelists express not, yet it must be fetch'd necessarily from the Third; since it is a sure and irrefragable Rule, *That all Four Evangelists make up one perfect Gospel.*

The Rhemists and Colledge of Doway urge for the Popish Doctrine, Rom. 7. 2. *The woman which hath an husband, is bound by the law to her husband as long as he liveth; but*

1. This place is to be Expounded by Christ's Words.
2. St Paul hath no occasion here to speak of Divorce, but of Marriage whole and sound, as it stands by Gods Ordinance.
3. He speaks of a Woman who is under an Husband; so is not she that is divorced from him.
4. St Paul useth this to his purpose of the Law being dead, to which we are not bound.

Nor is their Doctrine more favoured by 1 Cor. 7. 10. *Let not the woman depart; as being in her Choice whether she would depart or not: but in the case of Fornication she was to depart, or rather be put away, whether she would or not.*

The Bond of Marriage is to be enquired into, what it properly is. Being a Conjugal Promise Solemnly made between a Man and his Wife, That each of them will live together according to God's Holy Ordinance, notwithstanding Poverty or Infirmary, or such other things as may happen during their Lives. Separation from Bed and Board, which is part of their promise so to live together, doth plainly break that part of the Bond whereby they are tied to live together both as to Bed and Board. The distinction betwixt Bed and Board and the Bond, is new, never mentioned in the Scripture, and unknown in the Antient Church; devised only by the Canonists and the Schoolmen in the Latin Church (for the Greek Church knows it not) to serve the Pope's turn the better, till he got it established in the Council of Trent, at which time, and never before, he laid his *Anathema* upon all them that were of another Mind; forbidding all men to marry, and *not to make any use of Christ's Concession.*

Bed and Board, or Cohabitation, belong to the Essence and Substance of Matrimony; which made Erasmus and Bishop Hall say, *That the distinction of those two from the Bond, is merely Chimerical and Fancy.*

The promise of Constancy and mutual Forbearance, if it hinders Divorce as to the Bond, hinders it also as to bed and board; and because the same bed, and the same table were promised in the Marriage Contract; but the promise does not extend even to Tolerating Adultery, or Malicious Desertion; which, according to God's Ordinance, Dissolves the Marriage.

Our Saviour speaks of Divorces Instituted by the Mosaical Law; but they were no other than Divorces from the Bond.

The Form of the Bill of Divorce, among the Jews was this, *Be Expelled from me, and free for any body else.* To give the bill of Divorce, is from the Hebrew Root ברה, which is to break, or cut off the Marriage. With this agree the ancient Canons, Councils, and Fathers of the Church.

Concil. Neocasar. & Elib. forbid the retaining an Adulterous Wife. Concil. Eliber. Aurelian. & Arelatens. give Liberty in such Case to marry again. Clemens's Constitution, Tertullian, St Basil in his Canons, approved by a General Council, are for Marrying again. Concil. Venet. If they marry in any other Case than Fornication, they are to be Excommunicated, and not otherwise. Concil. Wormat. gives Liberty to the Innocent Party to Marry after Divorce. Concil. Lateran. gives leave for the Innocent Party after a Year to marry again.

Concil. Lateran. If any one take another Wife while a Suit is depending, 2nd afterwards there be a Divorce between him and the first, he may remain with the Second.

Laſtantiu, St Hierom and Epiphanius, are for allowance of Marriage after Divorce. Chrysostom, Hom. 19. 1 Cor. 7. says, *That the Marriage is dissolved by adultery; and that the husband, after he hath put her away, is no longer her husband.*

Theophylact on the 16th of St. Luke says, *That St. Luke must be interpreted by St. Matthew.* St. Hillary is for marrying again, as Dr Fulk saith upon St. Matthew the

the 7th. The Eastern Bishops, in the Council of Florence, are for marrying again: *Justin Martyr* speaks of a Christian Woman's giving a bill of Divorce to a dissolute Husband, without finding any fault with it.

*St Ambrose* says, a man may marry again, if he put away an adulterous Wife; *Theodore* said of a Wife who violated the Laws of Marriage; Therefore our Lord requires the Bond or Tye of Marriage to be dissolved.

All the Greek Church to this day allow it. *Erasmus*, *Cajetan*, and other Papists: The Civil Law, and the Laws of the Emperor are clear for it: And the Constitutions of our own Church of England, in the time of H. 8. E. 6. and Queen Eliz.

The Practice of the English Church: In the Stat. 1 Jac. c. 11. against Second Marriages, Divorces are excepted; and in Canon 107. 'tis provided they shall not marry again; but it is not said such Marriages are void, only the Caution is forfeited: Neither doth the Canon speak of such Separations, wherein the Bond itself is broken, as 'tis by Fornication.

Even the Canon Law allows marrying again, in case a Woman seek her Husband's life, and in case of a Bond-woman. *Gratian* says, in the Cause of Adultery Lawful Marriages ought not to be denied. In the case of an incurable Leprosy, it was the Advice of *St Gregory* to *Austin* the Monk, That he that could not contain, should rather marry. *Bellarmin* owns, that the Bond of the Marriage of Infidels is dissolvable; but the Marriage of the Faithful and of Infidels is of the same nature: and *Justinian*, a Jesuit, confesses, that it is simply lawful for the innocent party to marry again. And the Roman Doctors allow a dissolution of the Bond of Marriage, if the parties should, after consummation, transfer themselves into a Friery or Nunnery.

The Canons which in the case of Adultery prohibit Marrying in the life time of the guilty person, are contrary to 2 Acts of Parliament made 25 H. 8. and 3 & 4 E. 6. <sup>Ref. Leg. Eccles. Tit. de Adulteriiis & Divor- tiis.</sup> wherein no Canons are allowed that be any way repugnant to the Laws of God, or the Scripture, the King's Prerogative Royal, and the Statutes of this Land, 22 persons were to review the Canon-Law, in which Review, drawn up by *Archbishop Cranmer*, the Innocent person is permitted to marry again, according to Christ's Law and Concession.

We have examples of such Marriages in H. 4. of France, H. 8. of England, Lord Mountjoy, Lord Rich, Bishop Thornborough, and divers others. And it is observable, That in the Case of the Marquis of Northampton, 5 E. 6. who had been divorced for his Lady's Adultery, and married another before any Act of Parliament made concerning it, an Act which passed afterwards (only two Spiritual and two Temporal Lords dissenting) declares he had been at liberty by the Laws of God to marry, and did lawfully marry another; where the Act manifestly supposes, that whatever had obtained for Law till that time, was void, as being contrary to God's Law.

The most considerable Men of the Reformed Churches both at home and abroad are of this opinion: *Grotius* quotes *Tertullian*, in whose time it was lawful for the innocent party to Marry.

*Lancelot Inst. Jur. Can.* acknowledges that Divorce is a dissolution of the Marriage.

*Selden*, who is not likely to contradict the Laws of this Kingdom, maintaineth, That Marriage after Divorce is to be allowed; and in that particular, *Dr Hammond* doth not contradict him, but is clearly for it.

The Opinion of *Amesius* deserves to be set down at large: "Marriage, says he, cannot be dissolved by men at their pleasure; and for that reason, as it is considered simply and absolutely, it is rightly said to be indissolvable; because Marriage is not only a Civil, but a Divine Conjunction; and is also of that nature, that it cannot be dissolved without detriment to either Party: Yet it is not so indissolvable, but it may be dissolved for a Cause which God approves as just; for the Indissolvability was not instituted for a punishment, but for the Comfort of innocent persons; and it admits an exception, wherein God ceases to conjoin. By Adultery two are made not to remain one Flesh: hence it is, that a Contagious disease is not a cause of dissolving Marriage. By Adultery the very Essence of the Contract is directly violated; but the Contract ceasing, the Bond depending on the Contract necessarily ceases. It is against all reason, that all Matrimonial Duties should be for ever taken away, yet the Bond or Obligation to those duties should continue. The words of our Lord, *Matth. 5. 32.* and *19. 9.* have no distinction or limitation of the putting away, but simply and absolutely approve of putting away; therefore they approve of putting away, not partial, or to a particular purpose, from Bed and Board, but Total.

None are against the Reformed Divines, but *Dr Houson*, *Mr Bunny*, and *Dr Prideaux*.

*Dr Howson* was a professed Adversary to *Dr Reynolds*, who was a great Maintainer of the Church of England against all the points of Popery, and particularly in this.

*Dr. Taylor*, *Bishop Hall*, *Dr Fulk*, are for second Marriages ; no Authors against them but the *Council of Trent*, and those of the *Church of Rome* ; whose Credit is only saved by those of our Church who agree with them.

Upon the difference of Explication between *St Ambrose*, *Origen*, and *St Austin*, a new kind of Divorce has been thought of, *from Bed and Board* ; but this *Divorce*, or *Name of a Divorce*, was unknown to the *Jews* and *Ancient Christians*.

I said so much before, at the first and second reading of this Bill, that I was in good hopes to have had no further occasion given me of answering any Objections against it now ; but seeing divers new Arguments have been studied and framed against it since that time, I shall now endeavour to satisfy and clear them all.

1. The First Argument against it is, That the separation from Bed and Board doth not dissolve the Bond of Marriage. To which I must Reply, as I did before, That this is a distinction without a difference ; newly invented by the *Canonists* and *Schoolmen*, and never heard of either in the *Old* or *New Testament* , nor in the times of the *Ancient Fathers*, who accounted the Separation from Bed and Board, to be the Dissolution of the Bond itself.

2. That first Institution of Marriage, that they may be *one Flesh*, is by Adultery dissolved, when the Adulteress makes her self *one Flesh* with another Man ; and thereby dissolves the first Bond of her Marriage.

3. The Objection, that if the Bond be dissolved, and afterwards, if the Man or Woman be reconciled, they must be Married over again, is no necessary Consequence, no more than 'tis in a Person baptized, who may break his Covenant, and renounce his Baptism ; and yet upon true Repentance be received into Gods Favour by virtue of the first Covenant, without any new Baptism. Suppose a Witch, who they say makes a Compact with the Devil, to renounce her Baptism ; should afterwards, by the Grace of God, seriously and truly Repent herself of the wickedness ; I do not believe that any body would take upon him to baptize her again : and if a Priest should renounce his Orders, and turn *Turk*, and yet afterwards repent him, and return into the Church, he need not be re-ordained a second time. The case will be the same in Marriage.

4. I said heretofore, That the *Roman Doctors* allowed this Dissolution of the Bond when the Man and Wife, even after the consummation of Marriage, would transfer themselves into a Friery, or a Nunnery : but because it hath been since doubted, that no Authority can be shewed for this particular, I shall here shew it of the old Constitutions of the Church of England.

Prov. " And in the Case of Religion, that is the true understanding, that, to wit, ei-  
Will Lin- ther of them betaking themselves to Religion before Carnal Knowledge, the  
dewode, " Bond of the Marriage be dissolved : but if both enter into Religion, and make solemn  
five Const. " Profession, then such Marriage is dissolved, even as to the Bond.

Ang. fol. 5. It hath also been said, that if the Bill pass, it will pass against the Church  
94. Ver- of England : which, I confess, I do not understand : for the Church of England is  
nul. late- within the Kingdom of England ; and if the Laws of this Kingdom be for the Bill,  
nus Sepa- and have declared it by the Assent of the King, Lords, and Commons, as in the  
rentur. Case of the *Marquis of Northampton*, was heretofore declared in the time of King *Edward the 6th*. That by the Laws of God the Innocent Party was at liberty to Marry again. Certainly the *Spiritual Lords*, as well as the *Temporal* and *Commons*, are bound to admit it ; and I know not why they should be called the Church of England, that join with the *Council of Trent*, and plead so much to uphold it, rather than others that join with all the *Reformed Churches*, and plead against that Canon of the Church of Rome, which hath laid an Anathema upon us, if we do not agree with them.

As to the supposed inconveniencies that will follow upon marrying again.

1. More inconveniencies will follow if they be forbidden to Marry again.

2. The Father would be in an uncertainty of the Children, if he should retain the Adulterers.

3. There would be danger of poisoning or killing one another, if no second Marriage were allowed.

4. Where the Parties should consent to new Marriages for their own Lusts, the Magistrates have power to over-rule such practices.

5. If they be kept altogether by Divorce from Marrying, it would occasion the Innocent Party to sin.



A little before the main question about passing the Duke's Bill, the Dutchesse's Agents handed about this Paper, among such as they thought to be her Friends.

## T H E

CASE of *Mary*, Dutcheſs of *Norfolk*.

**U**Pon the Marriage of the Dutcheſs with the now Duke of *Norfolk*, in the year 1677, her Father the late *Earl of Peterborough*, paid as part of her Portion 10000 *l.* and Settled on that Marriage Lands of near 1000 *l.* per annum, the Remainder of which on Failure of Issue was limited to the now Duke and his Heirs for ever; and the Earl after his and his Lady's death secured to the Duke the Forfeiture of *Drayton*, worth 10000 *l.* more, and the Duke receiv'd also by Agreement 1000 *l.* per annum for Twenty years out of the Earls Estate; besides very rich Jewels, Plate, and other things of great value, which the Dutcheſs brought with her into the Duke's Family: And great Debts having been contracted, for the support of the Duke's Honour and his Service, while he cohabited with the Dutcheſs, she hath since his Separation from her paid them out of her own Estate.

That by the evil and malicious insinuations of the Dutcheſs's enemies, the Duke was prevailed on to carry her, then a Protestant, into *France*, and to put her into a Monastery (where she could not be admitted without changing her Religion) and left her there, on great assurances of sending for her home in a short time, and so parted with great expressions of kindness.

That a considerable time after, by the Dukes consent, she returned into *England*, and lived retiredly at *Drayton* in *Northamptonshire*; and at the time of the Revolution she again retir'd to *France*, where she continued till she heard of her Fathers's Imprisonment in the *Tower*, and then came back to *England*, and lived privately till her Father obtained his Liberty, when she came home to him.

That the 8th of *January*, 1691: the Duke was prevailed on by the instigation of her Enemies, to exhibit a Bill in the House of Peers, to the same effect with the Bill now depending, and divers Witnesses were examined on both sides, after which and a long solemn debate and due consideration had by their Lordships of the Witnesses, and what was Sworn by them, the 17th of *February*, they were pleased to reject the Bill without a second reading.

Notwithstanding which the Duke was again prevailed on the 22th of *December*, 1691. to exhibit a Second Bill in the House of Peers, to the same effect with his First, which after several debates, was the 2d of *January* following again rejected.

Some time after this, and for accommodating all differences between them, Proposals were made to the Dutcheſs, which after long agitation, on 28th of *April*, 1694. were reduced into writing, and executed by the Duke and Dutcheſs: The preamble of which Articles is in the words following. *Whereas diverse Controversies, Debates, Demands, and Suits of several natures have for some time since been agitated, and continued between the said Duke and the said Dutcheſs his Wife, &c. unto all which it is at last held fitting (it being conduſible to their respective quiets and ease) to have an end put, and the like for the future prevented. It is therefore hereby and by the Parties to these presents declared and agreed in manner following; Whereby the Dutcheſs convey'd to the Duke's use the Mannor of Castle Rising, &c. And also the said Dutcheſs and her Trustees assigned their Interest in a considerable part of the Mannor of Sheffield in Yorkshire to the use of the said Duke. So that by these Articles, and that Deed executed thereupon, the Duke had his then desired Advantages.*

That after the execution of these Articles, the Dutcheſs sent for one Mr *Negus* the Dukes principal Gentleman, and expressed herself very sensible of the misfortunes of the Duke and herself, and desired Mr *Negus* to tell the Duke, that she would avoid all Company that should give him any offence, and that she would not so much as pay a Visit, but where he liked; which Mr *Negus* lately testified before the Lords, and that he acquainted the Duke with it, as also that

she had several times told him, if she Dyed first, she would leave the Duke her Estate.

That notwithstanding the said Agreements, whereby the Duke and Dutcheſs agreed to live Separately, yet without his ſignifying any Diſſatisfaction to or with the Dutcheſs, and without any manner of Notice, or previous proceeding in the common and ordinary Courſe of Juſtice, but by taking from her that Legal Tryal in the Eccleſiaſtical Court, which by the Laws of this Realm ſhe is intitled unto, he did on the 16th day of February laſt exhibit in the Houſe of Peers the Bill now depending for Diſſolving the Dukes Marriage with the Dutcheſs, and for enabling him to Marry again. Upon which the proceedings were ſo very quick, two Foreigners ( a French Foot-man and a Dutch Cook maid ) lately brought from beyond Sea, being forthwith examined againſt her, charging her with Facts ſuppoſed to be committed many years ſince, and long before the date of the ſaid Agreement, and on which the two former Bills were founded, that it was impoſſible for her to make her Defence as ſhe might have done, if the proceedings had been againſt her according to the known Laws of this Land.

The Dutcheſs thought herſelf under a neceſſity of complying with all the Orders of the Houſe of Peers, and accordingly as well as ſhe could, made her Defence, tho leſs than a weeks time was allowed her for doing it, and upon examining the Evidence of the Dukes Witneſſes, many contradictions appeared, ſome whereof follow, as doth appear by the depositions taken in Writing, and now remaining in the Houſe of Peers.

For *Hauſeur* the Footman ſwears the Dutcheſs was at the *Cock-Pit*, when and before he came, to live with Sir *John Germaine*, and that he continued there fifteen days after, and that after the Dutcheſs left the *Cock-pit* ſhe went to *Fox hall*.

*Vanneſs* the Cook-maid ſwears *Hauſeur* came to Sir *John* when the Dutcheſs was at *Foxhall*.

*Hauſeur* ſwears that 8th Feb. 92 he left Sir *Johns* ſervice, when the Tryal was between the Duke and Dutcheſs in Parliament, and after lived privately ſix or eight weeks, till he and *Vanneſs* could get for *Holland*, and arrived there in Eſter following.

And yet in another place, he ſwore he deſired leave to go, and afterwards that he alſo went for *Holland* as ſoon as the wind was fair.

But note, all the Evidence was cloſed and ordered to be ſummed up the 9th of February, ſo that he need not afterwards to have gone. And whereas he inſinuates that he and *Vanneſs* were ſecreted and kept from being Witneſſes :

Note, it doth no where appear, that either he or *Vanneſs* were ever thought on for Witneſſes.

*Hauſeur* ſwears he returned again to Sir *John* in Summer 92, being often ſent to by Sir *John*.

Whereas *Bayly* another of the Dukes Witneſſes, ſwears he did not return again to Sir *John* in two years after he went away, *Bayly* the witneſs being all that time and three years before, a Servant in the Houſe.

Note alſo, that this very Summer 92, to wit, in Eaſter Term, the Duke brought his Action againſt Sir *John*, which was tried Michaelmas Term 92, at which time it had been more likely, if Sir *John* had believed he could have done him any harm, he ſhould have kept him in *Holland*, rather than have ſent for him over, eſpecially conſidering that this fellow afterwards ſwears Sir *John* ſwore in a rage this fellow would betray him.

*Hauſeur* being asked who ſent for *Vanneſs* over,

He answered, that after he had promiſed the Duke and Lord *Howard*, to ſpeak the truth of what he knew, they deſired him if he met *Vanneſs* to deſire her to come over, and ſpeak the truth of what ſhe knew.

And being ask'd how long after he met *Vanneſs*, answer'd about 12 months ſince.

And being ask'd when was the firſt time he ſpoke to her, about her coming over to ſpeak the truth, answered, 'tis about a year ſince.

And being asked how long it was ſince they reſolved to come over, answer'd, 12 months.

*Vanneſs* being asked whether ſhe was not ſent for from *Holland* to be a witneſs, Answered, ſhe knew nothing of it, till eight or nine weeks ago.

*Vanneſs*

*Vanneſſ* Swears ſhe was ſent away on account of the Tryal.

Whereas *Peacock*, *Hawkeſworth*, and *Knight*, three Servants of the *Dutcheſſ*, Swore the *Dutcheſſ* turn'd her away before the Tryal, for keeping company with *Dutch* Souldiers, and they do Swear a new Cook maid there before the Tryal.

*Hauſeur* Swears he had a Key of the door going into the *Park*, and could come in when he would,

And yet owns, he knew but two of the Servants, one whereof is long ſince dead.

And alſo the *Dutcheſſes* Servants ſwear they never heard any body had a Key, and that if any Key had been, they muſt have known of it; they alſo prove the Shutting up, Bolting and Chaining the door every night, and Opening it every morning, and but one of the Servants remembers ever to have ſeen him at the door, and then he rung the Bell, but came only to ſee a Country woman of his, and to carry Letters to *Holland*, and brought answer back to her, but was not admitted beyond the paſſage.

*Hauſeur* and *Vanneſſ* Swear they ſaw the *Dutcheſſ* and Sir *John* in Bed together at *Millbank*.

The *Dutcheſſes* Woman ſwore ſhe has put the *Dutcheſſ* to Bed, and taken her up every night and morning ſeveral years, and never ſaw him in the Houſe. And two others ſwear they were conſtantly in waiting night and morning, and poſitively deny any knowledge of any ſuch thing, and ſay they never ſaw *Hauſeur* there, and that *Vanneſſ* was never admitted up ſtairs, ſhe was ſo dirty a creature, much leſs to dreſs or undreſs the *Dutcheſſ*, as ſhe pretended often to have done.

*Vanneſſ* ſwears ſhe could not tell the places ſhe has been at theſe ſix weeks laſt paſt. Whereas

Mr *May*, and two other of the *Dukes* ſervants, Swear ſhe has been fourteen days in the *Dukes* own houſe, with the full liberty of the Houſe.

*Vanneſſ* being asked whether ſhe ever told any body of the occaſion of her going away, ſhe ſwore yes, ſhe told it to a great many in *Holland*, and not here.

Yet being afterwards asked whether ſhe ever diſcovered that ſhe was ſent out of the way, ſhe ſwore directly no.

Theſe are ſome of the many plain Contradictions and Diſproofs of theſe Evidences; beſides the great improbability in their own nature, in ſeveral things ſworn.

But it is alſo to be noted, that *Hauſeur* left Sir *John's* ſervice in a diſguſt, and ſo it is proved by *Baily* another of the *Dukes* Witneſſes, and that what *Hauſeur* ſwore could be nothing but Spight and Malice. Yea, it is proved on the *Dutcheſſes* part, that he ſwore he would find a way to be revenged of him, and that perhaps it might not be long fiſt; and Mr *Strange*, Mrs. *Pitts*, and her two Maids, who could have depoſed very materially for the *Dutcheſſ* reſuſed to appear, tho often ſummoned; being perſons not in the *Dutcheſſes* Intereſt or Power.

This *Hauſeur* has been out of place ever ſince he left Sir *John's* ſervice, April 96. and is ſo ſtill, as he Swears And ſo in conſequence likely to be neceſſitous.

Note alſo, that *Hauſeur* ſwears Sir *John* gave him ſeven Guineas to pay the charges of himſelf, *Vanneſſ* and another, which were ordered to be kept private, till they could be ſhipp'd off, and alſo for their paſſage into *Holland*, which was in time from the 8th of Feb. 92. till Eaſter.

Which does not look like a Bribe for a ſecret of this nature, being hardly ſufficient to maintain three people, and pay their Lodgings, for two months.

*Hauſeur* would be thought a mighty Confident, ſo as to have a Key to the *Dutcheſſes* houſe, to come in and go out when he pleaſed; and yet, as well acquainted as he pretended to be with the Houſe, and the *Dutcheſſes* Bed-chamber, he could nor tell on what Floor it was, nor what Furniture it had; nor whether Wainſcotted or Hanged. And when he was asked, which way the Windows of the Bed chamber looked, he triſted in that Queſtion, and concluded he could ſee the Water, but was afraid to go near the Window for fear of being diſcovered, and yet had no ſcruple of coming into the houſe with his Key at any time.

Theſe things being obſerved, it muſt be conſider'd, that the Facts now in effect charg'd againſt the *Dutcheſſ*, are ſuggeſted to be done many years ſince, and were debated and conſidered before the Peers, before the rejection of the two fiſt Bills, and long before the agreement for putting an end to all Controverſies and Debates. Now 'tis very hard to put the *Dutcheſſ* to account again, for thoſe

very



very Facts, considering that after eight or nine years, many people are dead, others dispersed, and not in a little time to be found out. and circumstances of times and places (which in the nature of all these Cases is almost all that is left to discover a Falsity) forgot.

The Dutcheſs is alſo under the unavoidable neceſſity of proving a Negative againſt downright Swearing, and that without any matter Introductory, and alſo by two mean Servants, the one turned out of her place for keeping company with Foot Souldiers, and the other leaving his place in diſguſt, becauſe he could not have the Play Money.

Maſters are already too much in the power of their Servants, and if they charge their Maſters with Adultery, Felony, and even Treafon, it is not eaſily in the power of the Maſter to defend himſelf againſt downright Swearing; Servants having thoſe opportunities of the knowledge of times and places and company, which cannot be denied or avoided, and which others have not, where upon they may frame and build falſe Evidence, and many times are of ill Principles and deſperate Fortunes, and of tempers very Revengeful, ſo that whoever turns away a Servant, he is in his power for his Eſtate, Honour, and even Life itſelf. And therefore for the ſafety and freedom of Families, in other Countries they are not permitted to be Evidence againſt their Maſters in any matter criminal whatſoever.

Note alſo, that the Dutcheſs thinks ſhe as an *Engliſh* Subject has by *Magna Carta* the ſame right to a Tryal in the legal and ordinary way of Juſtice, as the reſt of the Kings Subjects, eſpecially conſidering that there never yet was in *England* one Precedent, of a Bill exhibited in Parliament to diſſolve a Marriage at the firſt inſtance, without any previous proceedings in the Eccleſiaſtical Courts; (which in theſe Caſes is the Law of the Land) and not above five or ſix Bills, in above 600 years, ever paſſed to diſſolve Marriages, or make Second Marriages good, even after there had been a Divorce in the Spiritual Courts, and thoſe Bills too in Caſes generally where the Huſbands were without any recrimination.

No Impediment appears why the Duke ſhould not have endeavoured a Divorce at Law, before he had attempted a Bill to diſſolve the Marriage. For any Application to the *Legiſlature* for tryal of matters of private right is improper, becauſe there are proper Judicatures, that give that remedy the Law allows.

To aſk any thing of the *Legiſlature*, in private Cauſes between party and party, beyond what the known Laws in force give, ſeems to be improper, becauſe,

1. It is to make a Law in one perſons caſe, which is not the Law in anothers.
2. It is to retroſpect actions, and after the Fact to augment or alter the Penalty. Our Laws are certain and known, that perſons may conform their actions to them.
3. The Courts and Forms of Law are equally the Subjects right with the Law, and the application to the *Legiſlature*, takes away all that right of Form and Charging, whereas a certainty in time to answer, and exceptions to witneſſes, and other Legal defences of the Fact, cannot be denied the meanest Subject.

The conſequence that ſhort and ſummary ways of proceedings may have on the Settlements of Eſtates and Families, may be very dangerous, and tho the Duke of *Norfolk's* Bill paſſed the Houſe of Peers, yet a great number of the Peers both Spiritual and Temporal, entred their proteſt againſt its paſſing, and their reaſons for it.

It ought to be no prejudice to the Dutcheſs, that the next Heir preſumptive to the Duke doth not as yet appear to be a Proteſtant, becauſe when a Bill which hath lately paſſed both Houſes is become a Law, it is not likely that noble Family will be without a Proteſtant at the head of it.

If any of the witneſſes formerly examined on the Bill in 1691. be now again produced, it is humbly apprehended, that as the validity of their teſtimony they then gave was totally overthrown, by a greater number of witneſſes, ſo it will be again, tho under the diſadvantage of the great diſtance of time.

*Martis 19. die Martij, 1699.*

The Reading the Bill, for dissolving the Marriage of the Duke of *Norfolk*, the second time, and hearing Council as well on behalf of the Dutchess against the Bill, as on behalf of the Duke for the Bill, being the Order of the Day, before the Council was called in, to prevent the Inconvenience of People crouding into the House, the House made an Order,

That none but the Council, Solicitors, and Parties should be called in, and that the Witnesses should have notice to attend without, ready to be called in, if the House should think fit.

It was also intimated, That if the Duke and Dutchess did think fit to come into the House, they should be accommodated with Chairs, that being a respect shewed to the Nobility when they come into the House.

And then the Council, and Solicitors, and Parties of both sides were called in; And first the Bill was read to them.

And then the Lady Dutchess's Petition was read.

The Council that appeared, were

Sir Thomas Powys, }  
Mr. Dod, } for the Dutchess.  
Dr. Pinfold, }

Mr. Serj. Wright, }  
Mr. Norbey, } for the Duke.  
Mr. Alwood, }  
Dr. Oldish, }

And Mr. Speaker then spake to this effect:

Mr. Speaker, You are there, I see, Council on both sides. The House have ordered, That my Lady Dutchess should be heard according to the Prayer of her Petition; and my Lord Duke had likewise an Order to be heard to make good his Bill. I think the Petitioner is to be heard first, to make good the Allegations of her Petition; and when the House have heard you both, as to that, they will consider whether they will proceed to hear the Allegations of the Bill made out.

Sir Thomas Powys, Mr. Speaker, with your favour, Sir, I am of Council with the Petitioner, the Dutchess of *Norfolk*, against this Bill that is now before you, and I believe I may say with some assurance, that this Bill, in the manner as it is now brought before you, is the first that ever was attempted in this Honourable House. It's, Sir, true, that several years ago this Bill, or another of the same Nature, was attempted twice in the other House, and as often rejected; but 'tis as true, at last it does come from thence hither, but not without a Protestation there; and I humbly hope you will take notice that this is a Bill of Divorce in Parliament, in the first Instance, without a previous Prosecution to examine the Fact in any of the Ordinary Courts, that have Authority in these Matters.

It is a Bill not only to Divorce the Dutchess upon a very short warning, who hath been a Wife twenty three Years, but to render her Infamous to all Posterity by Act of Parliament, which I account to be the greatest Misfortune possible to befall any Person; and at the same time it takes from her the legal Tryal of the Fact whereof she is accused, and which she hath a right to by the Law of the Land, sure as much as the meanest Subject; and which we don't apprehend she has in any wise forfeited, nor is there any reason assigned, why his Grace has not been pleased to proceed in the Ordinary Course. I hope, Sir, you will take notice also, that this is in truth, nothing but a Suit between Party and Party. 'Tis meerly a Cause Matrimonial between Husband and Wife, began originally in the House of Peers, and as hitherto the beginning of Causes between Party and Party, in that House hath been strongly opposed, so I hope it will be thought reasonable to do so always, because it deprives the Subject of that Legal Defence due to him by the Law of the Land. If this was always complained of, when the Proceedings were in a Judicial way, surely 'tis a great deal worse to begin there a private Cause between Party and Party in the Legislative way. I can see no manner of difference with respect to the loss of those great Advantages the Party is intitled to, only this seems rather to be the most against reason.

Sir, this is a summary Proceeding with a Witness. It began but the 16. of *February*, and but a Weeks time was given to the Party accused of so high a Crime, and of so great consequence to the Party accused, to be heard to it; and tho perhaps we may with reason enough find fault with the tedious proceedings in some Courts, where Appeals and

Writs of Error are justly due, as where Property is well fixed, it must needs be reasonable. I say, from various Causes, though Suits in the Ordinary Courts are very tedious, yet I am sure a Summary way of proceeding without due warning, or any certain way of making Defence by any known rules, and without Oath, as here without Appeal, without any possibility of retrieving the matter again, with great submission, and if this must be for all that one has in the World, such a Summary way is a very terrible thing.

I would be glad any one would make it his own Case, and think with themselves how they should like it, if their Life, Estate, and all they had, were put upon such a Summary way of proceeding. 'Tis true, in some Kingdoms where the Government is Arbitrary, the Proceedings are summarily, and most commonly they go together; and if we were in a place where the Judges were infallible, and there were no False Witnesses, and Truth could be discovered at an instant, a Summary way would be best; but since Men are fallible, since there is Passion and Partiality in the World, since oftentimes there is notorious Detections of Perjury, and several things are difficult to be disclosed, and require a reasonable time for examining into Facts; from thence it is that there are settled Courses for determining all Questions in *England* between Party and Party; and there are known Rules and good Methods, for the relieving against any ill Judgment that is given.

Whatever you may think of this particular Case of the Dutcheſs of *Norfolk*; the Example is of mighty consequence to all Parents, that perhaps make hard shift to give their Daughters considerable Portions, and may think they have married them well, and made Provision for them and their Children. I say it will be hard, if their Daughters should be sent home to them upon a Fortnights warning, and that Witnesses should be examined against them, without their having notice so much as of the places of their Abode. And a thing should be determined before the Witnesses can be well known, and it must be agreed to be of great Consequence to all Collateral Heirs, if Marriages are so easily and suddenly set aside for want of Issue, which I find to be one of the Causes assigned for this Bill, and that it may be in a Summary way, perhaps, before they can well hear of it. I am sure, this is a matter of too great Temptation to be put upon Men that may grow weary of their Wives, and desire a better Fortune, or desire Change, or may be moved by a thousand Reasons we can't think off, to revive old Quarrels, and think of things long since passed, if you will set such a Precedent of Divorcing in such a Summary way.

This is sure of infinite concern to us in higher matters. A Bill of Divorce of a Woman in Parliament, without a Legal Tryal, is just the same thing as a Bill of Attainder against a Man for Treason; the one forfeits the Estate, corrupts the Blood, and takes away his Life, and the other does very little less: For I find according to the Bill, 'tis to forfeit her Joynture, to defame her Person, corrupt her Reputation; and though it leave her Life, it is left with Infamy, which is worse than Death, and in a Case of this high moment, sure you will be careful how you alter the course of Trials. I beseech you, Sir, will not the reason be the same, that a Bill of Attainder may be brought against a Man, and that Witnesses against him may be fetched from beyond Sea, which he had formerly discharged from his Service, and put the other side to prove what is always very difficult, the Negative, to make his Defence, which must needs require a reasonable time for the making out of Circumstances, and laying Evidence together; where will be the difference between proceeding against a Man for his Life without a Tryal, and proceeding against a Woman for her Joynture, where her Name, Family, and Reputation, is concern'd, and perhaps her Children, the legitimacy of whom must come in question; and in a Case, where the Person by no behaviour of hers hath forfeited such a Tryal, nor the Person that Prosecutes this Bill, can't shew, that he hath been obstructed in his proceeding in the ordinary way. I need not take notice of what every body knows, that we have a happy Constitution, if we can keep it, every Man can call his Wife his own, and his Estate his own, because it can't be taken away, but by Legal Tryal; but if you will go into these extraordinary resorts, when the Courts and the Law is open, without any previous Preparations for that Matter, by having a fair Examination, that the Party can't say there is a surprize, I know not where it will end; and though in one case it may be desirable that there should be an extraordinary Relief; but will this go no farther? Can any body say that?

That which we find in *Magna Charta* is not to be forgot, where there is so much care in the several instances of it for the preserving of Property, and the Right of Tryals, *Quod nullus destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum vel per legem terra.*

Why, in this Case the Ecclesiastical Law, is *Lex Terræ*. And if that be to be taken away without any Reason, why may not the Law in any other Case.



We have perhaps in time of great Emergency and Publick difficulties, had some extraordinary Laws grounded on Extraordinary Reasons, but now we are in a time of settled Peace, when there may be a just determination according to the Law of the Land, I can't see any reason for this proceeding, no not in this particular case.

I would Sir with your favour, take notice of those few Instances of this kind, that have been in *England* by Act of Parliament, and in what manner they have proceeded.

There have not passed hardly Six in Six hundred years, I think I may challenge them on the other side to shew so great a number, but those I have I shall quote: But they proceeded in another manner than this has done.

'Tis true, where Persons have had a fair Tryal in a proper Court, and Witnesses have been Examined, and Sentence final been pronounced, and where the party as to the fact hath been concluded according to the Law of the Land, when all this hath passed, some Instances there have been, that afterwards an Act of Parliament has passed to strengthen the Sentence, and to carry it farther than the Ecclesiastical Courts will allow, even to the dissolving the Marriage, and Enabling the Innocent Person to Marry again, but you will find all those Acts are founded and built upon the Sentence in those Courts, and recite those Sentences as a great inducement to the passing of those Acts, and I crave leave just to take notice of those. The first we find, is that made in the Case of the *Marquess of Northampton*, which was in 5 E. 6. He was Married to a Daughter of the Earl of *Essex*, and she Eloped from him, and was prosecuted in the Ecclesiastical Courts, and there was Sentence against her of Divorce. The *Marquess* from hence took upon him to Marry a Daughter of the Lord *Cobham*, and after Four Years Marriage of her he obtained an Act of Parliament to ratify the Second Marriage, which Act recites a settlement of Divorce in the Ecclesiastical Court.

This took its rise from Examination according to Law, and that Act of Parliament is grounded upon it, and recites it as a previous matter necessary to induce that Act.

The next that follow's was the famous Case of the Lord *Ross*, afterwards Earl of *Rutland*, though there perhaps was as great a notoriety of Fact as can be pretended in this Case, and he did not stand impeached of any immodest behaviour, but even in that case the Divorce by the Act, followed a Divorce in the Ecclesiastical Court, and that passed with such Difficulty that it was Four Years in hand, it began in Sixty Six, and was not passed till Seventy. I have a Copy of it, and it says that forasmuch as *Matrons* commonly call'd *L. Ross*.

And it proceeds thereupon to Enable him to Marry again, but this Sir could not be but by two Acts of Parliament, besides the Sentence in the Ecclesiastical Court, for he first got that Court to declare the Children illegitimate, and then in the year (70) the Parliament passed this Act.

I know of no other till we come to a case that happened within our Memory, 'tis the Case of a Person of great worth, and I hope it will give no offence when I cite the Precedent.

It was the Case of Mr. *Lukenor*, who had been grossly abused by his Wife, by Elopement and open Adultery, but the Act he obtained went no farther than to disable the Children born while she lived in open Adultery, and that Act recites a Sentence of Divorce, I have the Copy of it, and I crave leave I may read a few lines of it, It recites that Mr. *Lukenor's* Wife had Eloped from her Husband.

There was indeed a famous case not long agoe of a Lady that was taken away by Force, and pretended to be Married, and an Act of Parliament came afterwards to declare that Marriage Null and Void, but even there was a proceeding at Law with a Witness. The Person that had been concerned, was actually Indicted and Executed, it was not there to make a Divorce, and so it had been a Vain thing to have gone into the Spiritual Court, where there was no Marriage, for it was only a Law after the Fact Declaratory by way of Caution, to give the more satisfaction that that Marriage was Null and Void.

Sir, the last I know of (and it may be proper for you to observe how quick these People come after it) was that of a Noble Earl, that did obtain last Parliament, an Act for Divorcing him and his Lady. It is the Case of the Earl of *Macclesfield*, but in that Case it will be proper to take notice to you, that there were previous proceedings in the Ecclesiastical Court, there was a Libell exhibited against her, a charge upon her, and Witnesses examined, and she had a fair Opportunity of making her Defence, there was a Regular and a long Proceeding against her, and a Prosecution of her, in order to a Sentence of Excommunication, and then there came the Earls Petition into the House of Peers, setting forth that there had been such a Proceeding as this, and that she stood in contempt, having been Prosecuted as far as that Court could go, after an Examination of Witnesses, in all the Cases I have heard of a Divorce by Act of Parliament, there have been

been Proceedings in the Ecclesiastical Court, this was the way of former times, but now we are beginning where the matter ought to End.

And now the first Application is to that place, wherein all these Instances (as I think it ought to be) was the last resort. 'Tis true this Method may not please the Duke, for we know his Grace is in haste, and for cutting the knot a funder, at once by the Legislative Power, but I hope upon these Precedents, you will think it more reasonable it should be at first untied, or at least Loosen'd by a Judicial Proceeding. If you will, I do not see how in Justice the Parliament can deny the like Remedy the next Sessions to any other that may be in the like case, it may be in worse, for here is no pretence of any Spurious Issue; can the Parliament of *England*, whence we take our measures of Justice, deny the like remedy in Justice to any others that are in the like Case? What is it that guards you from an infinite application of this Nature, but requiring Persons to take the ordinary course first, and to come round about to the Parliament, as the last Remedy, to carry the Sentence perhaps farther than the Ecclesiastical Court can do, but if Persons may come up directly hither, I am apt to think your Lobby will be crowded with Petitioners of this nature the next Sessions, though the Sessions now are long and frequent, this single business may be so great as to obstruct all other business, I am sure a Committee for Adultery would have a full Employment.

Let it be consider'd how strange it would be if some Poor Man upon this precedent, shall come and make Application, and tell you he stands in need of such a Bill from the condition of his Family, that his Wife Plunders his House, sells his Goods, and lives in Adultery, and pray this matter may be examined in a Summary way, because he is not able to go through the costly course of Ecclesiastical Courts, and be favoured with a Divorce; would not this Poor Mans Case seem to have the like Justice, or possibly more, and yet if such a mean Man should come with such a Petition, perhaps it would look strange, and yet in Justice there is no respect of Persons, the Law in *England* is *Unum pondus & una mensura*, and if this should be done in the Case of a great and Rich Man, and not for a Poor Man, they may say what hath been said by some, That our Laws are like the Spiders web, which only holds the Lesser Insects.

Shall those that expect the best Fortunes and greatest Advantage by Marriage, not undergoe the bad Fortune of Marriage too? I am sure if this be so, it's a Privilege of Peerage, never thought of before.

You may see Sir by this Bill how Precedents grow upon you; at first in the Case of the *Marquess of Northampton*, it was hard to get an Act after a Divorce: So it was in the Case of my Lord *Rose*; the last Sessions, in the Case of the Earl of *Macclesfield* it went farther there, because there had been a previous proceeding in the Ecclesiastical Court, and his Lady had obstructed that Sentence, that Act passed before Sentence, but now we are come to have it done without so much as a Tryal to get a Divorce in the Ecclesiastical Courts, to have all passed at once in a Summary way, it will be but to Petition the Parliament, and all shall be determined without a possibility of being reheard.

I know nothing can be said on the other side with good reason (unless that which I heard in another place) why they should not go to the Ecclesiastical Court, which is that those Courts cannot Divorce a *Vinculo* Matrimony, therefore it would have been a vain thing; this may be a good Reason for them to come to you afterwards, but 'tis no Reason for them to come here at first, unless they will say at the same time, that every thing ought to be begun in Parliament, because 'tis possible every thing may be brought to the House of Peers at last, will they say that all Ejectments ought to be begun Originally in the House of Peers, because after the Parties have been at great charge and trouble in the Courts below, they may be brought thither by Writ of Error at the last. This would have been a good Expedient, in a cause lately where a Deed was Tryed over and over, if the Persons concerned in so many Verdicts, had once thought of having begun in Parliament to have had it settled, whether it was a just Deed or no, if this be the rule, it would be well it were known, and made to be the Law of the Kingdom, for that Law will be always reckoned heard which is made in one Case, if it may not be had in another, the Law of *England* does go throughout, and if it be Law for one 'tis for another: I have but one thing more to lay before you, and that seems worthy of your consideration, besides all that I have said.

You observe the Bill is General without Restraint, of Time and Place, or Description, or Circumstances relating to the Fact; now, Sir, I must take leave to acquaint you, that so long agoe as *April*, 1694. his Grace the Duke, who complains of this matter, as if some new misfortune had befallen him, having made former Complaints and Attempts for obtaining what he now desires, did at last in *April*, 1694. not suddenly, but by Advice of Council, with his Friends about him, after a long time of agitation come to Articles with his Wife the Dutches, of which I crave leave only to Read the Preamble.



The Articles are between his Grace the Duke of Norfolk, and the Earl of *Perthborough*, and recites. —

It is therefore determined by the Parties, and agreed as followeth, and thereupon the Articles proceed to settle every thing between the Duke and Dutchess, *Vide her to his own Satisfaction, and according to his own Desire; His Grace hath Reaped the benefit of those Articles, by having received a great Sum of Money, and the Dutchess parted with her Interest in that great and Noble Mannor of Sheffeld, his Grace hath had all that he on his part was to have, and hath Executed abundance of Deeds pursuant to this agreement: Now if after all this there be a Prospect of farther Advantage by another Marriage, that will not move you to give him a liberty for a departure from so Solemn Agreement, in what a Condition are People that have Purchased their Peace as the Dutchess has, if they may have Liberty to go back beyond this, for the Bill has no flint; surely all Reconciliation, between Men and their Wives, and all Acts towards them, and all Acts of kindness are to be favoured, and matters of a Divorce are of an odious Nature, and not to be Encouraged after such composure of Differences and Reconciliation. We have Instances of some that have taken their Wives again, and lived Comfortably afterwards; surely it shall not be in their power to go back and say, Pray let us be Divorced. 'Tis contrary to the use of all Acts of Pardon, what is the End of all Acts of Parliament, of General Pardon, and all Statutes of Limitation, but to ease People in such a Case, for 'tis impossible that any person can be able to Defend their Actions, Nine or Ten Years agoe, they can't keep their Witnesses alive, and therefore the Law hath often limited a time, beyond which Persons shall not go back, and this we think the Duke hath done by Articles, and surely they are Conclusive both before God and Man.*

I shall say no more, but that I don't apprehend the Nation will be in any great Danger. If the Duke do betwixt this and the next Session, proceed in the ordinary Course, and prepare matters against another Session, I am sure 'tis of Great consequence; no Man can deny, but we have a good constitution; but if it is in the Case of a particular Person, to be broken, such a breach in this Constitution may not be very easily recover'd.

I hope this Cause that is precipitated here out of time, and before those Preparations were made, that have been in all others Cases, shall be remitted to its proper place, where her Grace will give the Duke a Meeting, if they be not before that reconciled.

Mr. Dodd. Mr. Speaker.

I desire the favour of a word of the same side. These Bills are not common, I think there are not above three instances to be found in the Records of this Kingdom.

This Bill is to Dissolve a Marriage after Twenty three Years continuance, and that not upon so many Days Notice, as there have been Years of the Marriage, for to serve the particular purposes of one Person, 'tis a Law after the supposed Fact committed, the Law should go first, and the Fact follow, it is not a General Law, for all the People of England, as such it would have another Consideration, there is no occasion for particular Law, 'tis a Bill from the Lords, and in a little time for what I know, the Lords will prescribe to it, there is not one of these Bills for a Commoner, unless in my Lord *Rofs's* Case, who was of a Noble Family.

'Tis not pretended by this Bill, that the Dutchess hath had any Spurious Issue, though that was the Circumstances of one of the Bills that did pass, and that was a Material Circumstance in the Case, and that is not alledged here. These Bills are not to be made use off, but upon extraordinary occasions, and the utmost extremity, and till then I hope such Bills shall not be made use off, and we think the Proceeding upon this Bill, in this Case will appear much harder; for 'tis the first Instance of this Nature, when there has been no Proceeding in any Court whatsoever, to convict the Dutchess of this Offence, no citation all this while in the Ecclesiastical Courts, where the Dutchess might have an Opportunity to make her Defence.

If those Courts have Jurisdiction in any one thing, 'tis in Case of Matrimony, if this was brought into those Courts, the Dutchess would be allowed to make her Defence, not only by way of Recrimination, but Examination of Witnesses; a Commission might be had to Examine Witnesses beyond Sea, if she had any Witnesses there, or in the Country; she might appeal to a Superiour Court, and thence to the Delegates; these are all proper Defences that the Law allows, that there



may be no surprize upon the Party; and if injured, he may be righted in another place; these Proceedings we think are necessary to go before a Bill of this Nature, for then the Fact would be plain, and if the Dutcheſs had been convicted in this manner, as to the Fact we muſt not have opened our Mouths againſt it.

By the ſame Reason that a Bill is brought to Diſſolve this Marriage, in a little time you may have a Bill to marry People. Be it enacted for ſuch and ſuch Reaſons, ſuch Perſons ſhall be married, this would be a much readier way in Caſe of Contracts, than any Proceedings in the Eccleſiaſtical Courts. And though they may ſay the Law of *England* takes notice of Contracts of Matrimony, as well as any other Acts, that is, no Answer; for the Fact is, whether there is any Contract of Matrimony, or no; and ſo 'tis here, Whether my Lady is guilty of the Crimes charged here in the Bill, and for this ſhe ought to have a proper Tryal, and ought to be called to an Account in the ordinary Methods of Law, and then it might be proper to carry the Sentence farther than thoſe Courts can. I hope you will be very tender of making a new precedent, and I do not know of any Bill before this to convict a Woman of a ſuppoſed Crime; then this is the firſt Bill of this Nature, and you will conſider, whether you will make a precedent of it (or no) though this before you is the Caſe of a Great and Honourable Perſon, yet your Juſtice will be the ſame, if it ſhould happen that any other Man in the Kingdom ſhould be in the ſame Circumſtances, and willing to ſlip over all Tryals, whereby the Perſon accuſed might have an opportunity of making her juſt Defence, as is the Caſe of this Noble Lady, who is hurried on after twenty three years Marriage to a Determination, in as many Days in this extraordinary manner.

I hope therefore you will not proceed in a Bill of this extraordinary Nature, of which there is not one inſtance to be given, where you have begun to examine a ſuppoſed Crime, but you have always left it to the Determination of the Law in the ordinary Courſe, and we think it ought the rather to be ſo in this Caſe, becauſe 'tis not pretended by the Bill, that there is any ſtop put to their proceedings there; there is no abſence of Witneſſes, no incapacity, but his Grace may proceed there to convict this Lady of the Crime he ſuppoſes her guilty of, and ſhe will there have her juſt Defence, and till then there is no Crime for you to judge upon; and I hope you will think fit to Rejeſt this Bill.

Dr. Pinfold, Mr. Speaker, I deſire to ſpeak a few words as to the Eccleſiaſtical Law, which is a part of the Law of *England*, as much as any other, for our Law does not receive *Majus & Minus*; and the Eccleſiaſtical Courts have been ſettled for ſeveral Ages, and are governed by ſuch Rules, which every Subject hath a Right to. Sir, This Bill is to Diſſolve the Bond of Marriage, and to give leave to Marry again; and I crave leave to ſhew the Houſe what our Eccleſiaſtical Conſtitutions are in that Caſe, and how tender they have been in that Point, and how thoſe Conſtitutions are grounded upon the Cannons and Decrees of Councils.

The Caſes where the Bond of Marriage is to be diſſolved, are but few, and they ariſe before Marriage; 'tis in the caſe of the Precontract, or Nonage, or Conſanguinity, and there the Bond is broken by the Sentence of the Judge, and the Perſon hath liberty to Marry again; but for what comes afterwards, whether it be the Caſe of Adultery, or any thing elſe, the Law Eccleſiaſtical, which as I ſaid before, is part of the Law of *England*, hath been very careful not to Diſſolve the Marriage.

The 48th Canon ſays, If any Lay-man ſhall put away his Wife, and marry another, he ſhall be excommunicated; That was the Senſe of thoſe early Days, and ſure they did not think it an indifferent matter, becauſe they puniſhed it with ſo heavy a Punishment. So it was in the Council of *Arles*, 314. and there it was decreed, that if a Man took his Wife in Adultery, he ſhould be forbidden to Marry: There, what was to be done? Counſel ſhould be given him not to Marry while ſhe lived, though ſhe was an Adultereſs.

And in the Council, 402. the *Neapolitan*, Evangelical, Apoſtolic Council, it was decreed, That if a Man was divorced from his Wife, or a Wife from her Husband, there they were not to Marry, but ſhould remain unmarried, or be reconciled.

And in the *African* Council, Canon 102. there it was provided, That they who were divorced, whether it was a Husband from his Wife, or Wife from her Husband, they ſhould remain unmarried. This was the Senſe of the Ancient Canons and Councils,

Councils, and this is received into our Ecclesiastical Constitution. In the 15. Year of the Reign of Queen *Elizabeth*, in the Chapter of Divorces, 'tis said, That upon a Sentence of Divorce, there must be an Admonition, and a Prohibition, that the Party shall not Marry again.

And in the Year 1602. in the beginning of King *James's* Reign, there was a farther Provision made to keep them from being married again, and that was this, That they should give Bond and Security they should not Marry again, this is certainly our Ecclesiastical Constitution, and grounded on the Sense of the Ancient Canons.

Now it remains to shew some Advantage this would have had, if she had had the Tryal, which of common Right is due to the meanest Subject, she would have had the advantage of Challenges, which she can't have here; for here the Evidence must drop from the Witnesses Mouths, who are Foreigners, and have been long absent; there they must give an Account of themselves, which here hath not been done by any body. This Lady might have given her Exceptions to those Witnesses, and had a Commission into *Holland*, to have examined how these Witnesses have behaved themselves, and whether these Persons were to be believed and credited; here she would likewise have liberty to give an Account how this Design began. I do now speak with respect to the Duke, but I do say it does seem to have began a year and a half ago. She would likewise have had the advantage of a thorough Reconciliation; and here are some Deeds in (94.) between the Duke and the Dutcheß, which I hope, if the House will take an account of, will have its due effect; she would likewise have had the advantage of an Appeal, the common Right of the Subject, and grounded upon good Reason; and in case there hath been a neglect in the first Instances, the Party may be righted in another place.

By this Bill she is debarr'd of the advantage of Recrimination, to which she hath a Right, for the Text Law is ———

And the Text Law, *de Divortiiis*, is the same, were the Charge most true, which we do not admit; yet if she can prove the same thing against her Husband, the fault of one must be set against the fault of another, and he can't have the advantage of his Prayer.

I shall repeat only one thing more, and that is the Case quoted already of the Earl of *Macclesfield*, but in that Case the Lady withdrew her self five or six days before Sentence; yet there the Lady *Macclesfield* had all her Defences, and even her Recriminations, and had a time to prove it; there was Publication, and a day set down for Sentence, but she spun out the time till the Parliament was ready to rise, and then my Lord's Friends advised him to begin in Parliament; and when the Lords were acquainted of my Lady *Macclesfield's* standing in contempt of the Court, and she was prosecuted so far, that she was almost ready to go to Prison for her Contempt, then the House of Lords did think fit to receive my Lord *Macclesfield's* Bill, and not before; but before my Lord *Macclesfield* brought his Bill in Parliament, there was nothing remained to be done in the Ecclesiastical Courts, but Sentence. And I hope for all these Reasons you will not proceed upon this Bill.

Mr. *Serg. Wright*. Mr. *Speaker*, I am of Council for the Duke of *Norfolk*, who is your Suppliant for this Bill, for redress against the highest Injury that can be offered; the Rights of his Marriage Bed have been Invaded, and he comes for that Relief here, which no other Court can afford him; for the Learned Doctor on the other side, tells you plainly from the Canon Law, that there can be no Divorce; a *Vinculo Matrimonii* in their Courts, now to send us to a Court for Relief, that they tell us before hand can give us none, is in effect to tell us we shall have none at all.

The Bill is founded upon the Suggestions contained in the first Three or Four lines in the Bill, that the Dutcheß of *Norfolk*, hath for divers Years lived in Separation from the Duke her Husband, and hath had unlawful Familiarity, and Adulterous Conversation with Sir *John Germain*, and is Guilty of Adultery on her part, and hath broken the Bond of Matrimony; these are the Reasons for which the Duke desires this Bill may pass; 'tis for the Adulterous Conversation of the Dutcheß, not for one single Act, but a continual Series of the like Acts for many Years; for we shall not give only one single Act or Instance in Evidence, but prove this Conversation for several Years, beginning in Eighty Seven, and carry'd on to the latter end of Ninety Five.



It hath been objected that this is the first Instance, of a Divorce, the first Bill of this kind, where there has been no Proceedings in the Spiritual Court; that 'tis the first Bill of this kind, we deny, but that there have been no Proceedings in the Spiritual Court, we own, for the Earl of *Macclesfield's*, was the same to all intents and purposes, as this is; for though 'tis true, they had been in the Spiritual Court, yet 'tis as true, they came here into Parliament, before any Sentence in the Spiritual Court; now to what Purpose is it to go into the Spiritual Court, and not to stay for the Determination of that Court; if the Judgment of that Court is to have any weight, in the Case of the Earl of *Macclesfield*, 'tis true, they had been there and Examined Witnesses on one side, with all precipitation, yet would they not stay for a Sentence there, but quitted their own Proceedings, and came to the Parliament, now I do take it that they had better never been there, than to have come away before Sentence, for when they were in the Spiritual Court, and were proceeding there, to leave that Court, shewed rather a mistrust of their own Case. But it was no objection in that Case, that it was taking it away from the Jurisdiction of the Spiritual Court. We don't come to you for any thing the Spiritual Court can grant us, for that Court goes no farther if the Fact be proved, then to make a Separation *a mensa & thoro* but the Bonds of Marriage is to be continued still; now with Submission, this is to punish the Innocent, instead of the Guilty; what would the Dutches desire more, than to be separated from the Bed and Board of her Husband, to be left free to accompany Sr. *John Germain*, but we go further, for we come to the Parliament to Dissolve this Marriage, for that which is allowed by several Learned Writers, to be a Justifiable Reason for so doing, for Adultery committed by the Wife, 'tis Expressly that a Man shall not put away his Wife, except in Case of Fornication, this Text plainly allows, that in Case of Fornication, a Man might put away his Wife, but the Popish Canons the Doctor has named, have put a construction upon it, say they, you shall put her away, but how? She shall be removed from your Bed and Table, but you shall not Marry another. Then they say, there is no precedent of a Bill of this kind, but there hath been a previous prosecution in the Spiritual Courts; I agree the Marquess of *Northampton's* Case, that that Act does recite the proceedings in the Spiritual Court, But that Case is stronger than this, for there the Marquess of *Northampton* had Married even in the Teeth of their Canon Law, and comes afterwards an Act of Parliament to make this Marriage good, and there the Divorce was no ingredient upon the passing of the Bill: But the Parliament Enacted the Marriage to be Lawful. In my Lord *Ross's* Case, there is no mention of any Divorce.

I Appeal to the Journals of your own House, for that; but notwithstanding the Divorce, the whole matter was examined over again, Witnesses were examined both in the House of Lords, and here upon the first Bill which was brought, which was to Illegitimate, and Bastardize the Children, and the Witnesses proved, that my Lord *Ross* and his Lady, had not laid together for a long time, and that she had kept Company with others, so that the Parliament did not found the Bill upon what had been done upon the Divorce.

I appeal to your own memory, that in the Earl of *Macclesfield's* Case, there was no use at all on that side, the Bill was brought, that there had been proceedings in the Spiritual Court, nor is any such thing recited in the Bill, but only an Express down right charge of Adultery; nor was it proper for them to have mentioned any proceedings in the Spiritual Court, since they waved that Prosecution, but we on the other side insisted on it, as a Reason why the Parliament should not proceed in it, it being to take upon them an Original Jurisdiction, but we were then answered by a Learned Gentleman against this Bill, that it was in vain to go there, for they could not give the Remedy that might reasonably be expected. I beg the favour to mention a Case or two, where Divorces have been in Parliament, and there have been no Proceedings in the Spiritual Court, one of them was the Case of Mrs. *Knight*, who was Married *infra annos Nubiles*, to Mr. *Goodwin*. Every one knows that a Marriage, *infra annos Nubiles* is a good Marriage, and if the Woman be above Nine years Old, she shall be Endowed, and yet notwithstanding, for some Irregular proceedings with out going into the Spiritual Court, they came into Parliament, and a Bill was passed by which this Marriage was dissolved, and I think 'tis expressly Enacted,

That she shall not Marry till such an Age. This goes farther, for here I am sure the Doctor would have complained, and told you, if there had been Reason to dissolve



to solve the Marriage, they could have done as great a Feat in the Spiritual Court, that they could have Examined Witnesses upon Oath, and could have told you whether there was proper Evidence, yet the Parliament without any regard to what they could do, would assert their own Jurisdiction.

The Case of Mr. *Wharton* was mentioned on the other side, and therefore I need not say any thing to it. There was nothing of Divorce nor needed any.

They say, this Bill begins where it is proper for matters of this nature to end, and that after we have taken a turn into the Spiritual Court, and travelled Three or Four Years there, then it will be fit for the Judgment of Parliament. I would know if they had been Seven Years in that Court (and perhaps if we come there, we shall not get out sooner) to what use the Examination of that Court would be. This House I presume, would not let those Despositions be Read here, Especially if the Witnesses to these Facts were Living.

They say this is a very Summary way of Proceeding, it may be to quick for the Dutchess, but you may be pleas'd to consider, that there was a Bill brought in to the other House some years ago and rejected; upon what terms that will rest upon us, to shew you by and by.

But the matter was, the Witnesses that proved the Fact, were sent out of the way by the Dutchess, and Sir *John Fermain*, when things were under an Examination, and we hope a matter of this Nature never shall not be baffled by keeping the Evidence out of the way.

We told them long ago, who the Witnesses were, they were the Dutchess's Servants, such as they thought fit to intrust.

They say this Bill deprives the Dutchess of her Tryal, I hope no Body thinks the Parliament will pass a Bill, without due examination of Witnesses, and Legal proof of the Fact, if so, what matter is it, whether the Proof be made before the Parliament, or some Inferiour Court, if the Dutchess be guilty of this Crime, we come here for a Relief, which the Spiritual Court, the Doctors tell you can't give us, since the Dutchess hath broke the Bond of Matrimony, we come to you to Dissolve that Marriage, and I hope we shall have it.

The Doctor hath insisted on one thing that I think is very extraordinary, He tells you by the Rules of their Law, if the Woman can Reimminate, and prove her Husband guilty, in such a Case, they must set the fault of one, against the fault of the other.

I wish the Doctor could have told you the offence had been Equal, that the Injury to Families had been Equal, a Man by his Folly of this kind, brings no spurious Issue to Inherit the Lands of his Wife, but the Woman deprives her Husband of any legitimate Issue, for when she converses in this Manner with another Man, the Issue may be equally lookt upon to be that Man's if not more, and this Lady hath kept this Conversation ever since the Year Sixteen Hundred Eighty Seven, and left the Duke.

One thing is farther Objected, and they Insist upon certain Articles of Agreement in Ninety Four, and they Read to you the Preamble of them, why Sir, the Articles if they come to be read through, I am sure it wont amount to what they pretend, it does not amount to this, that the Dutchess might use her Body as she pleased, there is no Agreement that she should live after her own pleasure, Indeed she was to have the use of her Household Goods, and Servants, and Live where she pleased, but that will not justify her in her way of Living.

Then to tell you, these are matters of a long standing, they are so, and of a long continuance, for if my instructions prove true, we shall prove this Scene of Adultery for matter of Eight Years Successively, and that by Servants that were privy to the Intregues, who were sent away to Holland, but no sooner was the Bill passed,

but the Man was sent for again, and the same Conversation continued that was between the Dutchess and Sir *John Germain* before he left England.

The same was continued after he came back to his Service in (1691). only they were something more cautious, and People were not admitted so familiarly, to see them in Bed together in (1692.) and so it continued till 1695.

They mentioned the Statute of Limitations, which was to put an end to frivolous and vexatious Actions; but how they can apply it to this Case, I can't see, because a Man shall not bring frivolous and vexatious Actions after a long distance of time, therefore a Man shall not complain when he hath received the greatest Injury that can be done to Mankind.

Sir, They are kind to us again, in recommending it to the Duke, to go into the Spiritual Court, till next Sessions, but we think we are in a proper Method here, for that Relief which the Spiritual Court cannot grant; and since we have so good Reason to come here, if we prove the Fact, I hope this High Court will not send away a Complaint of this nature, without such Relief as is futable.

Mr. *Northey*, Sir, I am of the same side, I would beg leave to say this, as to what the Council have said in relation to the Evidence, That there were three Witnesses examined upon Oath, in the House of Peers, before the Bill did pass there, and I believe they are aware of that, and that when you hear our Witnesses, there will be no Answer to be given on their side; and indeed the Witnesses they brought, were so far from contradicting our Witnesses, that they did really confirm them. But that is not the Case now, what our Evidence is, or whether it be fit for you to believe them, that will be when you have heard them, and for the matter of the time, that you can't take notice of neither, till you hear our Evidence. But this I may say, we shall bring a Man that will speak to within four or five Years.

But the matter they apply themselves to, which is material, is, Whether it is proper for you to proceed upon this Bill, that is, to give such a Relief as we desire by dissolving this Marriage. And in the next place, Whether this be a proper time to ask this Favour.

For the first, the Learned Doctor tells you, 'tis not proper at any time to do it, for he would have the Canon-Law govern here, as it does in their Courts. But the Council on the other side, have cited you several Precedents where it hath been done. In the Case of the Marquess of *Northampton*, the Second Marriage was contrary to the Canon-Law, and yet that Marriage was confirmed according to God's Law. And this Bill is to relieve against the Canon-Law.

Now, whether we are here in a proper time, Sir *Thomas Powys* has said a great many things, which may be proper to many other purposes. One Argument was, because the Witnesses can't be upon Oath, but that we know will not prevail in this place. In the next place they except, because this Proceeding is in a Summary way. I would know of them, Whether there is not the same Objection to all Proceedings before a Jury, That they have no notice what Witnesses will be produced.

Then in the next place they bring a great Argument from the Recital of some of these Bills, That there have been before a Sentence in the Ecclesiastical Courts. Now, 'tis true, they have been so in some of those Cases; but I beg leave to observe, That in the Case of the Marquess of *Northampton*, the Bill was not to confirm the Sentence, or to enable them to Marry, but to deliver them out of the hands of the Ecclesiastical Courts, who said it was not Lawful in that Case to Marry, for they were married before.

I beg leave to say, That in the Case of my Lord *Macclesfield*, there was no notice in the Bill that came down to you, of any Proceedings in the Ecclesiastical Courts. And I take this to be the Reason, because there was no Sentence, though where there was a Sentence, they had good reason to take notice of it. And I think there is as much



much certainty, and as good ground to proceed on this Bill, as in the other Case, for the Witnesses have been already examined in the House of Lords. In the Case of my Lord *Ross*, there was no regard to the Determination of the Ecclesiastical Courts, as a Guide to the Parliament; and it was looked upon as of no consequence, for the Witnesses were examined again.

'Tis true, when we came before you without such a Proceeding, we came under this disadvantage, you will be sure to expect a plainer and fuller Proof, but for that we will undertake to make the Fact so plain, that they can't give the least pretence of Answer to it.

We are here asking that, we can't have any where else. Their great Design is delay, and that we have learnt from the Civilian, who tells you their Methods are very grave and deliberate, and that they may have a Commission to examine Witnesses beyond Sea, and that is to enquire how their own Servants have lived beyond Sea.

As to what Sir *Thomas Powys* would have, that is, that we should go into the Spiritual Court, and apply our selves again here next Sessions: I do not think the Legislature will send us back to ask that in the Spiritual Court, which both have submitted to; for after the Duke had miscarried in the Relief he sought by another Bill, by the Dutchess's sending the Witnesses out of the way. Why, truly, after that, to prevent any Prosecution in the Spiritual Court, the Dutchess submitted to a Separation by Articles, and that was all the Duke could have pretended to by the Ecclesiastical Law; we follow her upon that, and come to enforce that Separation. And to make it effectual, and for that which we humbly hope will be thought but Justice to the Duke, that is, to be delivered from this Wife, and to have liberty to marry again; we think there is no occasion for delay, and that no body can be hurt by a Precedent that carries Relief in this nature, and deliver us from a Law which in the days of Popery was put upon us. Upon the whole Matter, I hope you will think that we are here very properly for Relief, and that we shall have the favour to call our Witnesses.

Dr. *Oldish*, Sir, The great Objection against the passing of this Bill, was, because Witnesses had not been examined in the proper Court. 'Tis very true generally speaking in Cases it ought to be so, but here is a very great Exception to that Rule, and which I think can't admit of an Answer, and that is the notoriety of the Fact, and in that Case they begin with Execution. And if that be so, I think there never was a clearer Demonstration in the World, for when formerly the Dutchess came to give in her Answer in the House of Lords, to the Charge against her, she did declare, That in the Year 83. or thereabouts, she went out of *England*, and tarried three Years, and returned about the time of the Revolution. And it does plainly appear there beyond all question, That she was at *Lambeth*, and went under the Name of the Lady *Beckman*, and was attended by one *Kemer*, who went then by the Name of *Goodman*. Besides this, there are Witnesses that speak to particular Facts. Now, I say, here is that which amounts to Demonstration, and where there is a Notoriety of Fact, that is, an Exception out of the General Rule, and 'tis proper to begin with Execution.

There is an Exception to the General Councils and Canons that have been mentioned, That there shall not be a Divorce, *à Vinculo*. Sir, I say, it was an Ecclesiastical Constitution, which was against the Law of God, and 'tis demonstrably so, for where our Saviour says, That a Man shall not put away his Wife, except in Case of Fornication; it is plain, that in Case of Fornication he may.

There is another thing insisted on; and that is, that there was a Reconciliation between the Duke and his Dutchess. 'Tis true, a Reconciliation should drown all things before that time, but when the Law takes notice in Case of a Relapse, that does *recrudescere*, it rubs upon the old Sore; and then that which was before laid a sleep is brought again upon the Stage, and will return with greater Vengeance. And we have plain Proof of her living in the same manner since, as before.

But they would insinuate to you that in case there was a Tryal in the Ecclesiastical Court, there might be a Recrimination, but there must be a Compensation, which can't be thought in this Case; for I think in this Case, under favour, there is no Comparifon. I don't think they are *Paria*, for 'tis impossible for the Husband to do



So that Injury at the Wife may, for she may bring a Bastard into the Family, and then the Estate does not go according to the Law of God and Nature, for every body desires his own Blood should succeed him.

Sir Tho. Powys, Sir, I shall say but very little. But Three or Four things have been mentioned on the other side; which they offer as if they conceived them to have great Weight, and yet they seem to me as very capable of being answer'd; and I crave your favour to do it.

They have gone much upon the Proofs, that they are ready to make, and I think not very properly, because we speak against their proceeding upon this Bill; but I am sure it turns upon them, for according to their own shewing, they are very well prepared to proceed in a Regular Course, for they have their Witnesses ready, and nothing does obstruct them.

Mr. Serg. Wright mentioned a thing, which I must confess, I was surpris'd in; for when I told him he could not find any Precedent of such a Bill as this, without a previous proceeding in the Spiritual Court; Mr. Serg. Wright said it was quite otherwise; and to shew you it was so, he cited Two Cases, Where there was no Marriage; now I always understood, a Divorce must be in any Case where there was a Marriage, for the Case of Mr. Knights, that was very lately; That was the Case of an Infant, who they pretended to have Married, *infra Annos nobiles*, and therefore says he, the declaring of that Marriage to be Null and Void by Act of Parliament, was a Divorce. The other, was the Case of Mrs. Wharton, which was no Marriage neither, for Marriage must be by consent, and that was a Force; and that he fancies to be a Case, where there was a Divorce too, without proceeding in the Spiritual Court, and yet of his own Shewing it was no Marriage.

Another thing I am much more surpris'd at, we insisted, that they would not shew an Act for making a Divorce, without giving the party an Opportunity to make a Defence, and the Doctor says in Common Cases it ought to be so; and they cited the Case of the Earl of Macclesfield we first mentioned, and the Doctor told you the progress it had, and that there was a full and regular proceeding, of great length of time; and that my Lady Macclesfield had all her Witnesses examined, and my Lord prosecuted her to an excommunication, which is in effect a Sentence, for it is in our Law, as in Case of Outlawry; This he calls a Precedent wherein they proceeded to get an Act of Parliament, without a previous proceeding in the Spiritual Court.

He tells you in the next place, that notwithstanding the Divorce in the Case of my Lord Ross, the Parliament did examine Witnesses, 'tis true, they did, for I don't think they will so entirely pin their Faith upon those proceedings, as to have no other satisfaction. But will he therefore say they took no notice of it, when 'tis the foundation and ground of the Bill.

He tells you in the next place, that the Crime does not seem equal between the one and the other, and so in some sort, they ridicule the Doctors notion of Recrimination, But I apprehend the Doctor is right in it, for it would be hard if a man should Marry a Young Woman, and give her an ill example in his own Family (I do not say 'tis this Case) and bring her acquainted with loose and ill Company, and by his example or provocation, lead her into the same Offence; would that Man deserve to be Rewarded with a new Wife, and another portion, because his first Wife, had only followed his Example.

They say the Offence is not equal, because the Man brings no Children into the Family.

I doubt it happens oftentimes to them that go abroad, that they bring home that to their Wives, which stick longer by them than their Children.

Then to come and say, the Articles can't be of any use to us at all; and to imagine that we use the Articles, so that the Dutchess might be at perfect liberty to live in Adultery, I wonder how that Conceit hath followed him hither; when we told him we had not such a thought as to live in Adultery, but they do direct her to live separate, and so we used them, as an answer to that part; we used them likewise as an Act of Total oblivion and remission, of any thing beyond that time, and I hope to such purposes, they shall be thought Sacred.

Now

Now, I beseech you, Sir, on the whole matter, have they on the other side, said one thing, but what does totally tend to bring all cases of Adultery immediately before you? Have they distinguished this Case from the Case of any other person? And then if they have not, I do not see from henceforward, that any but Fools will go to the Ecclesiastical Courts for relief; For, says the Serjeant, they cannot give them a final relief, and enable any person to marry again; and therefore let no body think to go there again; but here is a relief to be had worth a man's having. But I hope, we shall have the benefit of the Law, as it is, till you think fit to alter it; and then you will erect some Judicature, where people may have their trial. Now therefore the argument goes too far, or it argues nothing at all, because if there be anything in it, it goes to take away the proceedings of those Courts totally.

But though those Courts cannot do all that these Gentlemen desire, they can do what is very proper to be done. They can examine Witnesses, and pronounce Sentence; and give the party a full opportunity of knowing the Accusation and Accusers; and then the Cases we have mentioned have had the aid of an Act of Parliament.

Sir, We have spent a great deal of your time already: I hope, since you see what use they make of the last Precedent of my Lord *Macclesfield*, where he did proceed to an Excommunication. Now from thence they argue, that you should proceed originally in this Case. When is the time to make a stand, but in the first Case? And then no man can complain of any injury: If you grant this to my Lord, I think, in justice, you cannot deny it to any other that stands in need of it. I believe there never was the like before, and therefore, I hope, you will put a stop to it here.

Mr. *Dodd*. The Gentlemen on the other side have told you, that our Saviour hath said, *That no man should put away his Wife, except for fornication*. 'Tis true, the Text is so, but he cannot shew you any Text wherein our Saviour says, That the man may marry again, though he might put his Wife away. Another thing was said, as to the proceeding in the Ecclesiastical Courts. Dr. *Oldish* says, There is to be nothing but Execution, where there is a Notoriety of fact. And here the fact is notorious; and therefore you may come up to order Execution; but that is a strange Doctrine to our *English* Constitution. Would they hang one first and try him afterwards? that would make work. Let the fact be never so notorious, yet 'tis the right of all the people of *England* to have a legal trial: and I hope you will not interpose, till there hath been a regular trial in another place.

Then Sir *Thomas Powis* offered to produce the Articles, but they were admitted.

Lunæ 25. die Martii, 1700.

*The House resolved themselves into a Committee of the whole House to consider of the Duke of Norfolk's Bill.*

*Sir Rowland Gwynne took the Chair of the Committee of the whole House.*

*And the Council and Solicitors were called in, and the Bill read to them. And then Mr. Northey, of Council with the Duke, opened the Evidence thus.*

Mr. *Northey*. I Am of Council for the Duke of *Norfolk*. I shall not trouble you now (because I think it not fit) to say any thing for the Bill, for that you have approved of by Commitment of the Bill; and declared it to be a reasonable and just relief against the Dutcheß for the Adultery charged in the Bill. I shall not spend any of your time in aggravating the crime of Adultery.

But that which is incumbent on his Graces Counsel now, is to lay before you the proofs of the fact suggested in the Bill. And the facts to be proved are the introduction of the Bill, That the Dutcheß has lived for divers years in Separation from the Duke, and had unlawfull familiarity, and adulterous Conversation with Sir *John Germain*; and for that fact we will call our Witnesses.

And our evidence will make this out to you, as plain as 'tis possible to expect a matter of this nature to be proved.

However, I think they have managed things in that manner as we shall be able to give as plain a proof of these facts as might be expected of those acts which are in their own nature most publick. However in the nature of the thing, there were but a few persons to be entrusted with it, and those were generally Servants who had attendance on the Dutcheßes person. We shall produce you Servants both of the Dutcheßes, and Sir *John Germain*. And I hope it cannot be an Objection, That they are Servants, for to object to them, for that reason, is to say, You shall prove the fact, but you shall have no Witnesses, for these are facts that cannot be proved but by such as were concerned with the Dutcheßes.

For our Evidence it will fall out to be this, The Duke and Dutcheßes were married in the year 1677, and they lived together till about the year 1685: And then the Duke having



some account of her conversation of this nature, they did part, and afterwards she came to live openly with Sir *John Germain*; for in *May 1689*, the Witnesses will give you an account, that for two Months together she lodged with Sir *John Germain* at the Cockpit: And they lived there as Man and Wife, as the Witnesses phrase it. During the time they lived there, there was a near Relation of Sir *John Germain's*, Mr. *Daniel Germain* his Brother, and Mrs. *Briana* his Sister, did frequently come to the house; and two of the Witnesses were frequently in the room while they were a-bed together.

After two Month's time, the Dutchess thought fit to be a little more private, and it was given out she was gone to *France*, but in truth she removed to *Fox-hall* to a house that was taken by Sir *John Germain's* Brother, and went by the name of my Lady *Beckman*. And she lived there two years successively: and Sir *John Germain* came there frequently once or twice in a week, and lay there a-nights. During that time we have two Witnesses, that did attend the Dutchess, as well as at the Cock-pit: one of them is *Ellena Vanesse*, who was hired by Sir *John Germain's* Sister, and lived with the Dutchess at the Cock-pit two Months. We have a second Witness, one *Hofieur*, who was with Sir *John Germain* at the Cock-pit 15 days before the Dutchess went to *Fox-hall*; and afterwards he went to *Fox-hall*, when she removed there, and stayed with her all the two years.

These are both Foreigners, and Dutch people; and it was reasonable enough to expect foreign Witnesses, when an *English* Dutchess had a foreign Gallant. They are such as he thought fit to entrust about her.

After she had lived two years at *Fox-hall* (this brings her to the year 1691) she removed home again to her house at *Milbank*; and there Sir *John Germain* and she were frequently together, and have been seen a-bed together.

This brings us to the time when the Duke having an account, that she had this conversation with Sir *John Germain*, brought a Bill into the House of Peers for a Divorce; but it happen'd, that the Dutchess, and Sir *John Germain*, to avoid the condemnation, kept the Witnesses out of the way; and afterwards caused them to be sent into *Holland*.

The Woman stayed abroad till about 3 Months ago, but the Man returned before into Sir *John Germain's* Service; and he will give you an account of what observations he made there, for the familiarity continued between them then. He was admitted into the room where they used to be; and he will give you an account, how he hath seen them frequently together. And he brings it down to within the year 1695.

We have another Witness, one *William Bayley*, who likewise was a Servant to Sir *John Germain*, and came into his place when *Hofieur* went beyond Sea. He is an unwilling Witness, because he hath been preferred by Sir *John Germain*; but when he was upon his Oath in the other House, he did give an account, that while he continued in Sir *John Germain's* Service, notwithstanding this publick reproach in 1695 and 1696, she frequently came to Sir *John Germain's* house, with one *Kemer*, whom she had great confidence in: and one *Susanna Barrington*, I think yet in the Dutchesses Service. And this Mr. *Bayley* will give you an account, that his Master was often from home; and when he was so, he used to carry his Linnen to this *Kemer*, who was the Dutchesses Servant; or this *Kemer* would come to him for it: and this will bring it down to 1696. There are several Witnesses to confirm this, but we think with Submission, after the Dutchess had been so accused in the House of Lords of such a familiarity, any evidence of a Conversation between them afterwards, is as much as a thousand Witnesses, for no Woman that valued her reputation, having been accused as she was, would have had any Conversation with Sir *John Germain* afterwards. But we don't want circumstances to support the evidence of fact. We have as plain evidence in this case, as can be expected in a case of this nature: we will spend no more of your time, but beg leave to call our Witnesses.

Mr. *Atwood*. Sir *Rowland Gwynne*, please to favour me a few words on the same side; I shall not mispend the time of the Committee in repeating any thing said by Mr. *Northey*; I shall only observe, that the Witnesses, *Hofieur* and *Vanesse* say, That *Susanna Barrington* was privy to this adulterous Conversation. And this *Susanna Barrington* has withdrawn her self since the Bill was depending in the House of Lords.

'Tis further proved, That Mr. *Daniel Germain* and Mr. *Brian's* Wife were in *England* lately, and that these were privy to the same Conversation.

Then the Witnesses were called in, one by one, and Interpreters allowed.

The Witnesses that were examined before the Committee of the Commons were *Ellena Vanesse*, *Nicholas Hofieur*, *William Bayley*, and *Ann Read*.

But all, except *Ann Read*, were examined in the House of Lord's, and their evidence there being at large set forth, the Reader is referred to the same. The evidence of *Ann Read* is as follows.



*Ann Read* being ask'd, Whether she had ever seen the Dutcheſs go to Sir *John Germain's* houſe, and when, ſays, That about *April 1692* (which was ſoon after the Duke's Bill had been rejected in the Houſe of Lords) ſhe ſaw the Dutcheſs of *Norfolk* go in a Chair to Sir *John's* houſe, that the door was immediately opened upon her Chair's being ſet down, and ſhe went into the houſe with her Mask off.

She being ask'd, Whether ſhe had ſeen Sir *John* come to the Dutcheſſes houſe, and when ; ſays, ſhe, within a twelve-month laſt paſt, or thereabouts, followed him to the Dutcheſſes houſe about 3 of the Clock in the Afternoon, and that ſhe did not ſee him come out.

After the Witneſſes were examined on the part of the Duke of *Norfolk* for the Bill, Sir *Thomas Powis* of Council with the Dutcheſs of *Norfolk*, being called upon to make defence, ſpoke to this effect.

*Sir Thomas Powys.* I am at a loſs, Sir, and under ſome kind of a ſurprize, becauſe as far as I apprehend, you call upon us to make our defence. I hope in a caſe of ſuch moment as this is (and it may be there cannot be greater) and ſince you are pleaſed to take this caſe out of the uſual way of tryals, and to try it in the firſt inſtance, you will be pleaſed, that we ſhould be fairly and regularly heard. And ſince it was not allowed us upon our being heard againſt the Bill, that we ſhould have a time to make our defence. Now we have heard what the Witneſſes ſwear, we ſhall deſire but a ſhort time, no more than what is abſolutely neceſſary to make our defence. This hath ſpent us 6 hours already; and I am ſure the Witneſſes that have been examined, have given ſuch variety of Anſwers, that it doth afford a great deal to be ſaid to it. We have likewiſe a good many Witneſſes to be examined; but I am far from propoſing any thing to delay it. We had a week's time allowed us in the Houſe of Lords, but that is no rule for you, and we don't expect it here. But even while we are at this Barr, a perſon from a very worthy Member gives us intelligence, upon ſight of this Cook-maid, of a matter that will defame her; and he will be ready to make it out, that ſhe was turned away for being a common Thief in *Holland*: and therefore, Sir, you ſee how time is neceſſary in point of Accidents that do happen; and I cannot make our defence now.

Thereupon the Council withdrew; and the Committee having conſidered of the deſire of the Council for the Dutcheſs to have time allowed them to make their defence, were of opinion, That the Council ſhould proceed then to make their defence; and Candles were ordered to be brought in.

And the Council being called in again, Sir *Rowland Gwynne* being in the Chair of the Committee, acquainted them with the determination of the Committee.

Then Sir *Thomas Powys* obſerved upon the Evidence that had been given; and inſiſted, that the Evidence given before the Committee of Commons, did differ from the evidence given by them upon Oath in the Houſe of Lords; and offer'd to produce the Examination of the ſaid Witneſſes upon Oath in the Houſe of Lords. And an Objection being made, that ſuch Examination ought not to be read in that caſe, as Evidence before this Committee; the Council withdrew, and the Committee conſidered of the ſaid Objection, and were of opinion, that the ſaid depositions ſhould not be read.

And Council being called in again, were acquainted with it, and that if they had any Witneſſes, *viva voce*, to encounter their evidence, they might produce them.

*Sir Thomas Powys.* Sir, By this Reſolution, my Client is deprived of that defence I thought I could have made for her, but I ſubmit to the pleaſure of the Committee.

*Mr. Atwood.* The Examinations in the Houſe of Lords were ſo lately, that 'tis an eaſie thing for the Sollicitors, who were by, to give an account of a contrariety in the evidence, if there were any.

*A Member.* Whether you have any other evidence to offer, but as to this point?

*Sir Tho. Powys.* All our evidence would tend to contradict theſe Witneſſes; and if the reading of thoſe Depoſitions won't be allowed, we muſt abide your pleaſure, and ſubmit it to you.

*Mr. Dodd.* We ſubmit it to you; our Witneſſes were in concurrence with that ſort of evidence.

*Sir Rowland Gwynne.* There are ſeveral perſons named, who are perſons of Credit and good Reputation, Mr. *Brian* and his Lady, Mr. *Daniel Germain* and his Siſter; theſe would be Witneſſes of Credit, againſt thoſe that are you ſay not of Credit.

*Council.* We have ſummoned them, and Mrs. *Pitt*, and done all that we could on our ſide to get them here. And I hope you won't prejudge our caſe, to ſay they are in our intereſt; that is to determine the queſtion. We have likewiſe ſummoned Mrs. *Pitt* and her two maids, and whether they will appear or not, that we cannot tell, but this we are ready to make out to you.

*Mr. Atwood.* *Sufanna Barrington* the Dutcheſſes Woman, privy to the whole converſation, is proved to have been with her ſince the Bill was brought into the Houſe of Lords.

*A Member.* Whether he has one living Witness to produce, that he can make good his defence by?

*Sir Tho. Powys.* Sir, if you expect an answer from me, I am assured, that we have Witnesses, but if I cannot bring those people against themselves; if I cannot bring *Nichols* against *Nichols*, I despair of doing any good, if I bring a 1000 other Witnesses against him. And therefore, I pray this favour of you; That since 'tis your pleasure, that this evidence be not allowed, you will not make a bad construction of it, that I do not proceed to make a defence to this Bill; for I cannot truly do it, unless I had some other Instructions from my Client, but shall defeat her expectation to proceed upon the other part of the case, since what we built upon with good Authority, as we thought, is not thought fit to be admitted.

*Sir Rowland Gwynne.* Sir, you are at liberty to go on, if you have any thing more to say, than that you cannot proceed without further directions from your Client.

*A Member.* Whether they have any thing to offer in the defence of the Dutchess upon the crime she is charged with; for I believe 'tis a new thing for the Council, when their Client is charged with a crime, to say, they cannot defend her, unless they go, and ask, whether they shall defend her or no? If they have any thing to say in her defence, we shall be ready to hear it.

*Sir Rowland Gwynne.* *Sir Thomas Powys,* have you any thing more to say?

*Sir Tho. Powys.* I cannot but repeat what I have already said, That I would be glad to make the best defence this case may bear: and I may say, I have defended it twice with very good success, and this is a third time: and I would make the best defence this case would bear now. And I must own to you, that the course of our evidence, we did propose to our selves is so far broke, by the first determination you were pleased to make, that I cannot venture upon the rest of the defence, if so be your pleasure be not to admit of this matter.

*Sir Rowland Gwynne.* You may by any Solicitors or Agents, that were present when these Witnesses were examined in the House of Lords, prove what they swore there.

*Mr. Dodd.* We apprehend you have already determined the matter, and we cannot now meddle with it; but if I apprehend it a-right from the Chair, it is your Opinion, that we may produce the Solicitors and Agents to give an account of what was sworn in the House of Lords. Now we are under this disability by your determination, That we relying upon what you have determined against us, are not prepared with our Solicitors or others to give evidence of that matter; but in a little time they will be able to give you an account of what was then sworn.

*Mr. Atwood.* It seems they want to be taught their Lesson.

And then the Council withdrew, and the Committee proceeded upon the Bill, Clause by Clause, and went through it, and ordered the same to be reported.

F I N I S.

Ex. Gm. D.

2/25/22



